IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-775

THE CITY OF NEW ORLEANS AND HONORABLE MOON LANDRIEU,
Appellant,

VERSUS

NANCY DUKES, d/b/a LOUISIANA CONCESSIONS,
Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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MOTION TO DISMISS

The Appellee, Nancy Dukes, d/b/a Louisiana Concessions, moves to dismiss the Appeal to the United States Supreme Court herein as presented in the Jurisdictional Statement on behalf of Appellant for the following reasons:

1.

Though Appellant allegs otherwise, this is not an Appeal from a "final judgment". The Judgement handed down by the United States Court of Appeal for the Fifth Circuit on September 27, 1974, was "tentative" is "incomplete" in the respect that it requires further action by the District Court. This appears from the language of the last two paragraphs of the Fifth Circuit decision, which noted:

> "Finding the ordinance unconstitutional as applied, we reverse the summary judgment for the City entered below. Since the trial court did not find the Ordinance's discrimination unconstitutional, it did not consider whether the "grandfather clause" was severable from the Ordinance's simultaneous general preclusion of push cart hot dog vendors from the Quarter, that is, whether the Ordinance should be read as a total nullity, or whether it should be read to preclude the operation of all of the push cart hot dog vendors in the Vieux Carre. We remand for the District Court to resolve this question and enter judgment accordingly.
>
> "Reversed and remanded for further proceedings consistent with this opinion."

2.

The "grandfather clause" of Chapter 46, § 1,[1] of the Code of the City of New Orleans constitutes an "invidious discrimination" against Appellee. This "invidious discrimination" is twofold. The discrimination emanates from "exceptions" to the general prohibition against issuance of permits within the Vieux Carre area and Central Business District area. The Appellee does not qualify for any of these "exceptions" or "exemptions" as they presently exist. Further, the Appellee cannot under any circumstances qualify for the residency requirements of the "grandfather clause", despite her two year activity.

3.

There are no "compelling State interests" which justify the exclusion of Appellee from selling "foodstuffs" and "hot dogs" in the prohibited areas solely because Appellee has been selling "hot dogs" for two years prior to January of 1972, instead of eight years like Lucky Dogs.

4.

The "Permit Law" as it presently reads is the end result of a deliberate effort to favor Lucky Dogs, Inc., by the City Council of New Orleans as is apparent from a reading of a Legislative History of the "Permit Law". As indicated in photographs made a part of this Motion To Dismiss and Supporting Brief, these Lucky Dog push carts in no way add or preserve the charm and customs of the Vieux Carre. This is a spurious position advanced by the City as an afterthought to justify the enactment of this "invidious discrimination".

5.

The Fifth Circuit Court of Appeals definitively dealt with the questions presented by Appellant-City of New Orleans so as to render those questions now

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1. Appellee has presented Chapter 46, § 1 in its present form in Appendix "B". Appellee's treatment of the Legislative history of this Ordinance spans a period from 1942 up to and through 1973. This so-called "Permit Law" has its roots in the Commission Council Series Ordinances which are cited herein as CCS # _____. In 1954, the City of New Orleans adopted a new form of government, and began to pass Ordinances under the Mayor Council Series, referred to herein as MCS # ____. With the adoption of the MCS Ordinances, the City adopted the Code of the City of New Orleans whereby it designated that the "Permit Law" appear in certain Chapters of the City Code. At first under the MCS Ordinances, the "Permit Laws" appeared in Chapter 14 of the City Code, and subsequently, as is the case as of the date of this Appeal, the "Permit Law" appears in Chapter 46 of the MCS Ordinances. For purposes of simplification, the Ordinance under attack is referred to throughout this brief as Chapter 46, § 1 & 1.1, and references to the antecedant laws will be designated by CCS Ordinance # _____ or MCS Ordinance # ____, as is appropriate. All of the antecedant laws have been copied in the Appendices herein and made a part hereof.

presented before this Court so unsubstantial as not to need further argument.

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STATEMENT OF THE CASE

The Appellee, Nancy Jules, d/b/a Louisiana Concessions, filed a Civil Rights Action pursuant to 42 USC §1983 & 1985 which was allotted to Honorable Jack M. Gordon, Presiding, United States District Court for the Eastern District of Louisiana. Relief was also sought under 28 USC §2201 & 2202, whereby a declaratory judgment was sought declaring Chapter 46, § 1 of the Code of the City of New Orleans, as amended, unconstitutional as applied to the Appellee. Appellee further alleged that this City Ordinance was "facially unconstitutional" because it "invidiously discriminated" against Appellee in favor of other individuals engaged in similar, if not the same activities. The original Complaint alleged that the City did not have any "compelling State interest" in the enforcement of such a law. Violation of the "due process" and "equal protection" clauses of the Fourteenth Amendment of the United States Constitution were alleged.

Subsequent to the filing of the original Compalint, Appellee was forced to amend same because theCity, through it's Council, amended Chapter 46, § 1 and Chapter 46, § 1.1 of the Code of the City of New Orleans.

The City filed a mere "general denial" to all of the allegations contained in the original Complaint.

Interrogatories were filed by Appellee which were eventually answered by the City after a great deal of effort on the part of Appellee.

The District Court indicated that this matter was to be handled on the basis of "stipulated facts" and corresponding Motions For Summary Judgment. Appellee filed her Motion For Summary Judgment supported by reference to the original Complaint, Affidavits of Appellee and another individual together with the Answers by the City to the Interrogatories. Appellee filed her Statement of Material Facts. The City submitted it's Motion For Summary Judgment supported by a brief Statement of Material Facts.

The District Court denied Appellee's Motion For Summary Judgment, granting the City's Motion by judgment of October 9, 1973, and thereby dismissing Appellee's Complaint.

Appeal was taken to the Fifth Circuit Court of Appeals which reversed the District Court after a thorough treatment of the applicable law and facts. See Appendix "B" of the Appellant's Jurisdictional Statement cited at Jules v. City of New Orleans, 5 Cir. 1974, 501 F.2d. 706.

The City has presented a Jurisdictional Statement to this Court which rests upon the assumption that the Lucky Dog push carts are so "charming" and

"nostalgic" that the City was justified in denying Appellee her livelihood in one of the most lucrative commercial areas in the City of New Orleas where she has conducted her business activities for two years and not eight as the Lucky Dog push carts.

I.

THIS COURT SHOULD NOT ENTERTAIN THIS APPEAL IN THE FORM OF A JURISDICTIONAL STATEMENT FOR THE REASON IT LACKS JURISDICTION PURSUANT TO 28 USC 1254 (2) IN THAT THE DECISION OF THE CIRCUIT COURT WAS NOT "FINAL".

Argument Of Fact And Law

The judgment of the Fifth Circtui Court of Appeals is not a proper subject of what Appellant admits at page 6 of it's brief to be an "appeal" under 28 USC §1254 (2).

Jurisdictional statutes such as the foregoing have been consistently construed "with precision and with fidelity for the terms by which Congress has expressed it's wishes...." Cheng Fan Kwok v. INS, 392 US 206, 212, 88 S.Ct. 1970, 1974, 20 L.Ed.2d 1037 (1968) cited at Palmore v. United States, 41 USC 389, 93 S.Ct. 1670, 1675, 36 L.Ed.2d 342 (1973). This Court has always been prone to accord a rather strict construction of statutes authorizing appeals. Palmore v. United States, supra; Fornaris v. Ridge Tool Co., 400 US 41, 42 n. 191 S.Ct. 156, 157, 27 L.Ed.2d. 174 (1970).

Though this Court in view of the recent amendment to 28 USC §1254 (2) has liberally construed appeals on "jurisdictional questions", allowing them to be construed as Writs of Certiorari (see City of El Paso v. Simmons, 379 US 497, 85 S.Ct. 577 [1965]), this Court still has indicated a distaste for "piecemeal appellate review" before the United States Supreme Court. Goldstein v. Cox, 396 US 471, 90 S.Ct. 671 (1970).

Reference is made to the first paragraph of Appellee's Motion To Dismiss wherein is cited the last two paragraphs of the Fifth Circuit decision which Appellant-City of New Orleans now attacks. A fair reading of this language of the Fifth Circuit indicates the "tentative" and "incomplete" status of this matter at this time. It is not unreasonable to assume that if the District Court considers the "grandfather clause" severable from the "Permit Ordinance" under attack by Appellee, the City may not appeal Naturally, one can also assume that if the District Court finds that the "Permit Ordinance" is a "total nullity", then the City of New Orleans would appeal. It appears that this is not the ordinary remand situation. The weight and impact of the Fifth Circuit opinion, depends on what theDistrict Court does with its mandate. It would be less than candid for the City of New Orleans to suggest that it would not be pleased with the severance of the "grandfather clause" from the

ordinance under attack, leaving the entire remaining scheme of regulation as is. There does not seem to be anything "final" about what the Fifth Circuit instructed the lower court to do. Depending upon what the District Court does, the City may or may not take any further action in regards to this particular law. What obviously is frightening to the City of New Orleans is the possibility of a lower court finding that the entire regulatory scheme of the permit laws is a "total nullity". It is the "potential" of one alternative that undoubtedly concerns the City, not the finality of the Fifth Circuit Judgment of which it complains.

THERE IS NOTHING "CHARMING" OR "NOSTALGIC" ABOUT THE LUCKY DOG PUSH CARTS; AND CERTAINLY, THERE ARE NO "COMPELLING STATE INTERESTS" TO JUSTIFY THE "INVIDIOUS DISCRIMINATION" PRACTICE AGAINST APPELLEE. THIS SCHEME OF DISCRIMINATION, AS IS APPARENT FROM THE LEGISLATIVE HISTORY OF THE "PERMIT LAW", HAD BUT ONE PURPOSE, AND THAT WAS TO FAVOR THE ECONOMIC INTERESTS OF LUCKY DOGS TO THE UNJUSTIFIED DETRIMENT OF APPELLEE

Argument of Fact

It is essential to this Court's consideration of this matter that it be apprised of those "facts" cited by Appellee before the Fifth Circuit Court of Appeals which, to Appellee's knowledge, were never contested.

The facts are as follows: Appellee Nancy Dukes was in the business of selling food, drinks, confections and novelties from "movable push carts", on the public streets, sidewalks, and/or public and private places in downtown New Orleans.

The prime source of her business was the Vieux Carre, particularly during the summer months of May through September, when average weekly sales totaled approximately $385.00 per week. Appellee employed various salesmen on a commission-percentage pay basis. Appellee had all of the permits required by the City of New Orleans up until the last revision of Chapter 46, § 1 of the City Code.

In January of 1972, Appellee's manager, Frank D. Siliker, was arrested for violation of Chapter 46, § 1 of theCode of the City of New Orleans. See Appendix "R". Chapter 46, § 1 had been amended at that time by MCS Ordinance # 4744, passed in December, 1971. At the time of the arrest of Appellee's manager, Chapter 46, § 1 banned vending from "push carts" of all foodstuffs except hot dogs and hot tamales in the Vieux Carre area. (See Appendix "K" for MCS Ordinance 4744). Though Appellee assumed that she came under the "exceptions", as the law read then, her manager was nevertheless arrested for selling "hot dogs". However, the City realized the difficulty it would have in convicting Appellee of violation of Chapter 46, § 1 in view of the then recently enacted "exception" through MCS ORdinance 4744. Thus, the charges were dismissed.

However, in April, 1972, Chapter 46, § 1 was again amended by another Ordinance, to wit: MCS Ordinance # 4822 (See Appendix "M"). It was in this April, 1972 amendment that there first appeared the "grandfather clause" whereby the arbitrary period of "eight or more years" was chosen as the cut-off date for businesses which could obtain a permit in the Vieux Carre. By no small

coincidence, this eight year period happened to be slightly under that peri d of time during which the Lucky Dog push carts had been in operation in the Vieux Carre area. Since the dismissal of the charges against Appellee's manager in January, 1972, Appellee had contented herself with operating her push carts and selling "hot dogs" in the Vieux Carre in competition with the Lucky Dog push carts. However, with the appearance of the "grandfather clause" in the "Permit Law" via the April, 1972 amendment, events turned on the Appellee. Though Appellee could qualify under the "exception", Appellee could not qualify for the eight year residency requirements of the "grandfather clause" brought into play by the April, 1972 Amendment of the "Permit Law".

Appellee had no other recourse but to file a Civil Rights Complaint on August 1, 1972, realizing that the arrest of her manager for alleged violation of the "Permit Law" where no such violation existed and the subsequent enactment of the "grandfather clause" made it clear that the City of New Orleans had no intention of allowing her to operate her hot dog push carts in competition with the favored Lucky Dogs.

Subsequent to Appellee filing her Civil Rights Complaint, the City Council again amended Chapter 46, § 1 per MCS Ordinance # 4957 (See Appendix "N"), passed on August 31, 1972. This precipitated an amendment of Appellee's Complaint. Appellee's Complaint places at issue not only the "exceptions" contained in Chapter 46, § 1, but the "grandfather clause" of same Ordinance which taken individually or together "invidiously discriminate " against Appellee.

A. LEGISLATIVE HISTORY OF CHAPTER 46, § 1 & 1.1:

A consideration of this "Permit Law" is impossible without viewing the legislative history behind same which develops a scheme of discriminatory legislation which can hardly be considered as having a motive of preserving the "charm" and "nostalgia" of the French Quarter. Instead, the legislative history develops an insidious scheme to favor the economic interest of Lucky Dogs over and above the interests of Appellee who until the passage of the "grandfather clause" in April of 1972, was always able to qualify for the necessary permits to do business anywhere in the City, and particularly in the Vieux Carre area.

The present Chapter 46, § 1 of the Code of the City of New Orleans is rooted in CCS Ordinance # 15, 510 passed on February 20, 1942. See Appendix "A". This was apparently the first "Permit Law", and purported to regulate certain activities in the City of New Orleans and appeared to be a legislative exercise, as originally drafted, of police power by the City of New Orleans. This 1942 Ordinance was amended by CCS Ordinance # 17,633 passed on June 7, 1949. See Appendix "B". Also, it was again amended by CCS Ordinance # 17,989 passed on December 29, 1950. See Appendix "C". When the City of New Orleans changed its form of government, the "Permit Law" was again amended and re-enacted by MCS Ordinance # 217 passed on November 18, 1954. See Appendix "D". Under the new Mayor Council Series of ordinances, the "Permit Law" was again amended by MCS Ordinance # 3027 passed on January 28, 1965. In this 1965 amendment and re-enactment, the "Permit Law", for the first time, was designated in Chapter 46, § 1 of the Code of the City of New Orleans. Up until, and through, the 1965 Ordinance, it appeared that there was a legitimate effort on the part of the City of New Orleans to "control", not "eliminate" certain "transient vendors". See Appendix "E".

Beginning with MCS Ordinance # 4346, passed on May 28, 1970, there is evidence of an irrational approach to the regulatory scheme of the "Permit Law", and a consequent abandonment of the regulatory aspects of same. See Appendix "F". The First Amendment ofthe United States Constitution undoubtedly shuddered at the efforts of the City Council to regulate the distribution of literature by the imposition of a prohibitive fee of $10,000.00. Though the obvious import was to control "hard core pornography", the language of this MCS Ordinance # 4346 was more than overbroad.

The "hot blood" of theCouncil apparently cooled two months later when it returned to "regulating" the sale of novelties during Mardi Gras in the passage of MCS Ordinance # 4359, dated July 16, 1970. See Appendix "G".

Subsequently, the City Council appeared to "get off of the track" with new amending ordinances to the "Permit Law". In a companion ordinance to MCS Ordinance 4359, the City Council on the same day passed MCS Ordinance # 4360 which deleted Paragraph (14) of Chapter 46 § 1 of theCode of the City of New Orleans which had dealt with the distribution of "samples" and "convassing" on the City streets. See Appendix "H". Thereafter, approximately four months later, the City Council passed MCS Ordinance # 4439 on November 12, 1970, which re-included the permit to allow the distribution of "samples" and "canvassing" on the streets of theCity of New Orleans. See Appendix "I". There does not seem to be any explanation for this rather unusual behavior on the part of the City Council. This action in no way foretold of what was to follow in

the form of a blatant attempt to limit and restrict everything from "religious freedom" to "free enterprise".

Momentarily, normalcy seemed to return to the Council Chambers with the passage of NCS Ordinance # 4555 on May 6, 1971, which dealt again with "transient vendors" at Mardi Gras time. See Appendix "J". The Council was controlling, not eliminating, these "transient vendors" during Mardi Gras and apparently placed reasonable restrictions on them.

Finally, the City Council "broke the ice" with the passage of NCS Ordinance # 4744 on September 23, 1971. See Appendix "K". It is in this Ordinance there first appears the "invidious discriminations" in the form of "exemptions" that now characterize all of Chapter 46, § 1, et seq. The City Council, for the first time, ordained that all permits mentioned in Chapter 46, § 1, et seq., were invalid in the area known as the "Vieux Carre" with the exception of "hot dog" or "hot tamale" push carts, (Paragraph 5); the Jackson Square Artists (Paragraph 10); the sale of "supper tickets" to be held in private homes (Paragraph 12); the sale of goods in bankruptcy proceedings (Paragraph 19); exhibitions, expositions and educational events for which admission is charged or offerings solicited (Paragraph 21); sporting events for which fees are collected (Paragraph 24); amateur and professional prize fights, et cetra (Paragraph 25); church or school festivals, et cetra (Paragraph 26); carnival balls (Paragraph 27); symphony productions where fees are charged (Paragraph 28); orchestras in restaurants or businesses where no admission is charged (Paragraph 29); orchestra music for purposes of dancing where no admission is charged (Paragraph 30); music for entertainment purposes where a fee is charged (Paragraph 31); dancing when admission is charged (Paragraph 32); private dances in public halls (Paragraph 33); conduct of rummage sales (Paragraph 34); carrying on businesses by transient vendors who rent permanent space, not calculated to go over a period of one year (Paragraph 35); individuals selling flowers (Paragraph 38); and individuals engaged inthe business of selling pornography provided, of course, that they paid their $10,000.00 permit fee (Paragraph 41).

It is interesting to note that at the same time NCS Ordinance # 4744 was offered, there was also offered NCS ORdinance # 4746 which eventually passed on December 17, 1971. See Appendix "L". NCS Ordinance # 4746 declared that it was "unlawful to solicit money, subscriptions, advertising, gifts in kind or contributions or sell tickets, or magazines for any charitable, religious, educational or benevolent purposes as herein set forth on the sidewalks ... et cetra ... in the section known as the Vieux Carre ...". At a time when everyone was attempting to encourage charity, religion, education and benevolence, the City of New Orleans was bent on discouraging it. Though not connected with this Appeal, as was pointed out to the Fifth Circuit, this writer, in another suit for different clients, attacked NCS 4746 successfully and had same declared unconstitutional as it related to the exercise of the "religious activities" of the Krishna Consciousness Movement. See International Society for Krishna Consciousness, Inc., et al vs. City of New Orleans, USDC E.D.La. (1972), 347 F.Supp. 945, Appendix "L". The foregoing case is cited not as an effort to confuse or distract this Court from the immediate issues before it, but only to demonstrate concretely the extremes that the City Council was willing to go to for obviously political motives. This is the same City Council that Appellant claims is so concerned over the "charm" and "nostalgia" of the Vieux Carre. Can the City Council who sought to slap the First Amendment squarely in its face as to an issue of religious freedom be the same body about which Counsel for Appellant waxes eloquently as to its concern for the esthetics of the Vieux Carre?

It was shortly after the passage of the above Ordinances that Appellee's manager was arrested in January, 1972. These charges were dismissed as the City apparently realized that Appellee qualified under the "exemption" contained in Paragraph (5) of Chapter 46, § 1 as it then read. However the City was apparently not satisfied with allowing Appellee to take advantage of this "exemption". Thus, the appearance of the "grandfather clause" whereby Appellee would never be able to qualify under its residency requirements.

In keeping with the City Council's alleged concern for the "charm" and "beauty" of greasy hot dog push carts owned by Lucky Dogs, NCS Ordinance # 4822 was passed on April 6, 1972. See Appendix "M". It is with this Ordinance that the "grandfather clause" of which Appellee now complains, first appeared. An arbitrary time span of approximately eight years was chosen as the "cut-off date" for those businesses which would be allowed to conduct their affairs in the Vieux Carre area. Apparently, the City Council didn't realize what it was doing when it initially passed the NCS Ordinance # 4822. Its language precluded everyone, and even the "favored few" pointed out in this writer's discussion of NCS Ordinance # 4744, from doing business in the Vieux Carre.

With the passage of MCS Ordinance # 4822 in April, 1 72, the "hot dog" vendors with more than eight years of experience prior to January 1, 1972, not only enjoyed the "exemption" afforded them through MCS Ordinance # 4744, but now enjoyed the additional insurance of a business monopoly provided they were doing business in the Quarter eight years prior to January 1, 1972. It was no idle coincidence that only Lucky Dogs enjoyed this status. Naturally, this excluded Appellee who had been in the Vieux Carre area prior to January 1, 1972, for a mere two years. This double insurance to Lucky Dogs must have embarrassed the City Council and undoubtedly precipitated its next amendment to the "Permit Law".

The filing of the Civil Rights Action by Appellee on August 1, 1972, must have, no doubt, made the City Council somewhat nervous, lest someone point out the double insurance that the Lucky Dog "hot dog vendors" possessed. Therefore, the City Council passed MCS Ordinance # 4957 as of August 31, 1972,(See Appendix "N") almost one month after the filing of Appellee's Complaint, whereby it deleted from the "exemptions" Paragraph (5) of Chapter 46, § 1. As noted above, this was the paragraph in which the "hot dog vendors" had been mentioned, and which paragraph had been specifically "exempted" from the prohibition against issuing permits to anyone in the French Quarter. If the hot dog vendors enjoyed a "grandfather clause" by virtue of their eight year residency, then they obviously didn't need the "exemption" initially afforded to them.

What had occurred was that someone realized that the mere passage of MCS Ordinance # 4744 did not guarantee the monopoly of the Lucky Dog hot dog vendors. In fact, had nothing else been done, Appellee would have been allowed to operate under the exemption provided in MCS Ordinance # 4744 passed in December, 1971. But, obviously, this was not satisfactory to the City Council. They had to insure that only Lucky Dogs, with eight years experience, be allowed to operate in the Vieux Carre. Thus, MCS Ordinance # 4822 was passed in April, 1972. Appellee then realized that she could no longer enjoy what little exemption was provided to her as per MCS Ordinance # 4744. Obviously she could not qualify under the "grandfather clause" residency requirements. Appellee could not even operate under the "exemptions" as granted to her in MCS Ordinance # 4744. Though initially under MCS Ordinance # 4744 Appellee could have operated her hot dog push carts, the City apparently did not want her to do so, and thus, the arrest of her manager, and subsequent dismissal of the charges once Appellee made it clear that she wasn't going to be pushed around. Appellee's only remedy was to file a Civil Rights Complaint. When Appellee filed her Complaint, the City, perhaps realizing the embarrassing position it was in, turned around and deleted the "exemption" it had previously granted to "hot dog vendors" through MCS Ordinance # 4744, as it was obviously no longer needed to protect Lucky Dog push carts. The intent of theCity Council is obvious from a reading of this Legislative History. What other motive can be ascribed to the removal of the "hot dog vendor" exemption subsequent to the filing of Appellee's Complaint and the granting to Lucky Dog push carts the benefits of the "grandfather clause"?

Once the "hot dog vendors" had been favored, the City Council proceeded to expand that area th which the "grandfather clause" would operate. The City provided a further buffer to Lucky Dog push carts, thereby preventing any guerrilla warfare on th part of Appellee near the close perimeters of the Vieux Carre area. The so-called Central Business District is immediately adjacent to the most active commercial areas of the Vieux Carre. The City Council passed a triumverate of Ordinances which began to talk in terms of the "Central Business District". MCS Ordinance # 5085 was passed on February 8, 1973, which ordained that "transient vendors" could peddle their wares only during certain times prior and after "parade time". An exception was made for these "transient vendors" in that they could compete in not only the Vieux Carre area, but the Central Business District during these "parade times". See Appendix "O".

The second Ordinance taken up in this triumverate is MCS Ordinance # 5086 passed February 8, 1973. See Appendix "P". This particular Ordinance defined the Central Business District wherein the "favored few" could operate their businesses and where Appellee could not.

The last of the triumverate of these Ordinances was MCS Ordinance # 5087, passed February 8, 1973. See Appendix "Q". This Ordinance reiterated all of the "exceptions" previously granted in MCS Ordinance # 4744, and like MCS Ordinance # 4957, left out the "hot dog vendors" who had now been safely covered by the "grandfather clause" of MCS Ordinance # 4822.

All of the above amendments, re-amendments and re-enactments relate to Chapter 46, § 1 & 1.1 of the Code of the City of New Orleans. The "Permit Law", as it presently reads on the books, is contained in Appendix "R".

B. THE "CHARM" AND THE "BEAUTY" OF THE LUCKY DOG PUSH CARTS:

All through the City's brief, they have made much about the "charm" and the "beauty" and "nostalgia" of the Lucky Dog push carts. Appellee has made a part of this brief four photographs recently taken by a professional photographer, John Donnells of the City of New Orleans. Attention is directed to the closer views whereby the peeling paint, makeshift repairs and unsanitary conditions surrounding these Lucky Dog push carts are obvious. Please note the details of the chasis which sits upon two quaint balloon tires supporting a common steel tube frame upon which sits an inarticulately made tin shell which is supposed to represent a "hot dog".

Argument of Fact and Law

As is apparent from Appendix "R", Chapter 46, § 1, et seq. of the Code of the City of New Orleans, purports to set out the "Permit Law" for "...every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth, or to hold meetings or rallies or public entertainments in private or public halls or places ..." However, in the first paragraph of Chapter 46, § 1, there is contained the blanket statement "... such permits, however, are not valid in the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North, and Howard Avenue on the South, except as provided in Chapter 46, § 1.1 of this Chapter..." The area described in the Municipal Ordinance under attack encompasses the area known as the Vieux Carre of the City of New Orleans. Since the filing and arguing of this Complaint in the DistrictCourt, the City Council has expanded the area over which they enforce the discriminatory import of Chapter 46, § 1. Regardless, this only adds to the harm visited upon Appellee, and in no way has affected the issues to be presented before this Court relative to the "invidious discrimination" practiced upon Appellee.

The "invidious discrimination" practiced upon Appellee by virtue of Chapter 46, § 1, has two aspects. Both of these aspects are inter-related and complement each other. Both of these aspects have the same purpose, namely, to eliminate Appellee's participation as a business person within the Vieux Carre, and now the entire Central Business District, while at the same time allowing a "favored few" to conduct businesses which are essentially no different that Appellee's.

The first aspect of this "invidious discrimination" arises out of the reference contained in the first paragraph of Chapter 46, § 1, of the Code of the City of New Orleans, which establishes certain "exemptions" to the general prohibition against the issuance of permits within the Vieux Carre area which is encompassed in the larger Central Business District area. These "exemptions" really amount to "classifications" which distinguish Appellee from the "favored few" covered by the "exemptions". As appears in Appendix "R", permits are invalid in the area known as the Vieux Carre which is encompassed by the greater area of the Central Business District with the exception of "transient vendors" at Mardi Gras time at specified periods before and after "parade times" (Paragraph 1); the Jackson Square artists (Paragraph 10); persons who sell supper tickets to be held in private homes (Paragraph 12); persons who sell goods or auction goods in bankruptcy proceedings, etc. (Paragraph 19); persons or groups who put on exhibitions, expositions and educational events where admissions are charged or offerings solicited (Paragraph 21); persons who put on sporting events for which fees are collected (Paragraph 24); persons who put on amateur and professional prize fights, etc. (Paragraph 25); persons or groups who put on church or school festivals, etc. (Paragraph 26); carnival balls (Paragraph 27); symphony productions where fees are charged (Paragraph 28); orchestras in restaurants or businesses where no admission is charged (Paragraph 29); orchestra music for purposes of dancing where no admission is charged (Paragraph 30); music for entertainment purposes where a fee is charged (Paragraph 31); dancing when admission is charged (Paragraph 32); private dances in public halls (Paragraph 33); conduct of rummage sales (Paragraph 34); "transient vendors" who rent permanent space for the purpose of "closing out" businesses within a period of one year (Paragraph 35); individuals who are selling flowers on the streets (Paragraph 36); and individuals in the business of selling pornography (Paragraph 41) provided, of course, they have paid their $10,000.00 permit fee.

As indicated in Appellee's Statement of Material Facts and the City in it's separate Statement of Material Facts, Appellee was engaged in the sale and distribution of foodstuffs, drinks, confections and novelties throughout the public streets of New Orleans. It is uncontested that the Vieux Carre area which is within the Central Business District of New Orleans was the "prime source of business" for Appellee. It was in this area, and particularly the

Vieux Carre, that Appellee sold "foodstuffs" from push carts. Part of these "foodstuffs" sold were hot dogs. Under the present Ordinance, as it now reads, Appellee must obtain a permit under Chapter 46, § 1 of the Code of the City of New Orleans. As the law presently reads, Appellee, as a "hot dog vendor" enjoys no "exemption" under Chapter 46, § 1 & 1.1. See Appendix "R". Though Appellee would have qualified further exemption granted "hot dog vendors" under Chapter 46, § 1 & 1.1 as amended by MCS Ordinance # 4744, subsequent amendments pursuant to MCS Ordinance # 4822 now precludes Appellee from any "exemption". Appellee must qualify under the "grandfather clause". Insofar as Appellee was doing business for approximately two years prior to January 1, 1972, she cannot hope to qualify for the eight year residency requirement of the "grandfather clause" initiated by MCS Ordinance # 4822. In short, because of the "grandfather clause" Appellee cannot earn a livelihood because of her inability to meet the eight year residence requirement. Because of MCS Ordinance # 4957, Appellee enjoys no "exemption".

The second and most obvious aspect of this "invidious discrimination" arises out of the "grandfather clause". The way the City Counsil has gerry-manded the Ordinances, the Appellee is left with no alternative as to her course of action. Though Appellee, as admitted by the City, was lawfully engaged in the sale of foodstuffs and "hot dogs" before the passing of this "grandfather clause," she now finds herself unable to continue in business simply because she has not been in the Vieux Carre for eight years prior to January 1, 1972. Appellee was there for a mere two years prior to January 1, 1972.

Naturally, the question comes to mind, "What is the 'compelling State interest' asserted by the City to justify its disenfranchisement of Appellee solely on the basis of the fact that she has been in the Quarter, prior to January 1, 1972, for merely two years as opposed to eight years?"

The Appellant-City answers the above question by pointing out in its brief, ".... the economic viability of an area of a City is a valid and compelling purpose that should merit the government's protection through legislation: and, if this area of the City also is vitally important in maintaining the overall economic well-being of the entire City, as is the Vieux Carre, then the interest in closely legislating and protecting the viability of the area is even more compelling." Then the City in its brief attempts to transfer this legitimate end to the preservation of the Lucky Dog push carts which somehow, to quote the City, are part of the "... charm, beauty and tradition that are so vitally necessary for the economic productivity of an entire area of the City as well as that of the City itself."

The facts of this entire case make the Appellant-City's position not only legally untenable, but patently untrue. Their position is best described as an afterthought. It is spurious and borders on inanity. A reading of the Legislative History, as was brought to the attention of the Fifth Circuit Court of Appeals, together with a view of the photographs which are made a part of this brief in Appendix "S" prove the Appellee's position.

Again, this writer points to the Legislative History treated herein. Reference to Appendix "K" reveals that the City Council first attempted to "discriminate" against certain individuals, through enactment of MCS Ordinance # 4744. It was in MCS Ordinance # 4744 that there first appeared the "exceptions" or "exemptions" which have remained unchanged through numerous amendments except for "transient vendors" at Mardi Gras and the "hot dog vendors" (Paragraph 5 of Chapter 46, § 1). Appellee, at first, enjoyed the benefits of the "exception" contained in Paragraph (5) of the "Permit Law" through the amending MCS Ordinance # 4744. However, though the law apparently granted her this "exemption", her manager, Frank Siliker, was still arrested, though the charges were ultimately dismissed. The motive behind this scheme of "invidiously disciminatory legislation" begins to become apparent with the arrest of Appellee's manager when the law, on its face, granted Appellee the benefits enjoyed by Lucky Dog, Inc. But, this is not all of the evidence as to the real motives behind this "invidiously discriminatory legislative scheme". With the passage of MCS Ordinance # 4822 (See Appendix "T"), it becomes apparent as to what the City Council was attempting to do, and that was, push Appellee out of the restricted area, first the Vieux Carre, and later the Central Business District. With the appearance of the "grandfather clause" in MCS Ordinance # 4822, it became more apparent as to the insidious scheme of discrimination that the City Council was attempting to enact. Finally, the most damning evidence of the attempt on the part of the City Council to favor Lucky Dogs, Inc., came after the filing of Appellee's Complaint in the United States District Court when the City Council per MCS Ordinance # 4957 deleted Paragraph (5) which specifically granted an exemption to "hot dog vendors". Naturally, Appellee queried, "Why only the hot dog vendors?" The coincidence of Appellee's filing her Complaint, and the deletion in the "exemptions" of the hot dog vendors must compel this Court to view this insidious scheme of discriminatory legislation with a "jaundiced eye" as did

the Fifth Circuit Court of Appeals. The Lucky Dog, Inc. company which enjoyed its existance in the Vieux Carre area in excess of eight years was taken care of by the "grandfather clause" and no longer needed the "exemption" afforded to it in Paragraph (5) of the "Permit Law". The action of the City Council itself focuses on its obvious intent in this dastardly scheme of legislative chicanery.

As to the "beauty" and "charm" of Lucky Dog hot dog push carts, Appellee submits that the Court view the photographs recently taken by a professional photographer, John Donnels of New Orleans. These pictures are worth "a thousand words". There is nothing "charming" or "beautiful" about these shoddily constructed tin imitations of giant hot dogs. They blend with the charm and beauty of the Vieux Carre as one would expect "oil and water to mix".

The Fifth Circuit Court of Appeals in its decision herein relied heavily upon this Court's treatment of another "invidiously discriminating" law in Morey v. Doud, 1957, 354 US 457, 77 S.Ct. 1344, No. 1 L.Ed.2d. 1485. At page 710 of 501 Fed.2d, the Fifth Circuit noted that the Morey Case, supra, was ".... our chief guide in resolving this case, ..." It appears to Appellee that the Fifth Circuit followed the reasoning of Appellee's counsel in his original brief before the Fifth Circuit, thus, Appellee will reiterate her initial treatment of the law and facts as was presented to the Fifth Circuit.

The landmark decision of Morey v. Doud, 354 US 457, 77 S.Ct. 1344 (1957) is one of the latest and more explicit statements on the import of the Fourteenth Amendment and "statutory discriminations". In this case, under attack was a provision of the Illinois Community Currency Exchanges Act which excepted money orders of the American Express Company from the requirement that any firm selling or issuing money orders in the State must secure a license and submit to State regulation. In that case, the objection was raised that this "exception", as the "exceptions" of the various "permit" holders herein, resulted in a denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution to those individuals as Appellee who were subjected to the requirements of the currency law in Illinois and the exclusions of the "permit law" in New Orleans. The U. S. Supreme Court quite properly held that the Currency Law of Illinois was invalid because of the "discriminatory exception". Most important to our consideration in determining references with which to judge these "exceptions" for certain "permit holders" and the operation of the "Grandfather Clause" is the language of Morey that appears at Page 1349 of 77 S Ct. setting out the "test" to be applied to any potential "discrimination" as follows:

> "In determining the Constitutionality of the Act's application to appellees in the light of its exception of American Express Money Orders, we start with the established proposition that the 'prohibition of the equal protection clause goes no further than the invidious discrimination.' Williamson v. Lee Optical of Oklahoma, 348 US 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563. The rules for testing a discrimination have been summarized as follows:
>
> '1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.
>
> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3. When the classification in such law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.'
>
> Lindsley v. Natural Carbonics Gas Co., 220 US 61, 78-79, 31 S.Ct. 337, 340, 55 L.Ed. 369."

This Court went on in Morey to note certain qualifying language which will be discussed later in this brief. However, the recitation of the "test" to be applied to any potentially "discriminatory law" cited in Morey is perhaps the most explicit statement that appears in the law. There have been other cases which have admitted that there has been "no precise formula" stated as to the "test" to be applied to "potentially discriminatory laws"; and this writer submits it is important to cite the language of those particular cases, all of which, together with the language of Morey, should be read as a whole in order to determine exactly what we are looking at, and at which the U. S. District Court never did look.

The next significant statement as to the "test" or "standards" to be applied to any potentially "discriminatory law" appears to McGowan v. State of Maryland, 366 US 420, 81 S.Ct. 1101, (1961). In this case the so-called "Sunday Laws" were under attack. Though the Court affirmed the validity of the "Sunday Laws", it dealt with the "standard" to be applied to potentially "discriminatory laws" as appears at Page 1105 and 1106 of 81 S.Ct. as follows:

> "The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The Constitutional safeguard is offended only if the classification rests on grounds solely irrelevant to the achievement of the state's objective. State legislatures are assumed to have acted within their Constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. See Kotch v. Board of River Port Pilots Com'rs., 330 US 552, 67 S.Ct. 910, 91 L.Ed. 1093; Metropolitan Casualty Ins. Co. of New York v. Brownell, 294 US 580, 55 S. Ct. 538, 79 L.Ed. 1070; Lindsley v. Natural Carbonic Gas Co., 220 US 61, 31 S.Ct. 337, 55 L.Ed. 369; Atchison, T & S. F. R. Co. v. Mathews, 174 US 96, 19 S.Ct. 609, 43 L.Ed. 909." (Own Emphasis).

At Pages 1105 and 1106 of 81 S.Ct., the Court went on to find that the legislature could reasonably find that the Sunday sale of the exempted commodities was necessary for either the health of the community or the enhancement of the recreational atmosphere of the day as it concerned those people who enjoyed the facilities of the beaches. The Court also found that the "record" was barren of any indication that the foregoing "reasonable" basis did not exist. However, at Page 1106 of 81 S.Ct. of McGowen, the Court went on to cite certain language which is significant, as follows:

> "Secondly, appellants contend that the statutory arrangement which permits only one Anne Arundel County retailers to sell merchandise essential to, or customarily sold at, or incidental to, the operation of bathing beaches, amusement parks, etc., is contrary to the 'equal protection' clause because it discriminates unreasonably against retailers and other Maryland Counties. But we have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional prerequisite...."

The immediate foregoing citation is important to our consideration insofar as we have an individual "person", i.e., Appellee, being discriminated against by favored treatment to "hot dog vendors" in the same "territorial limits" of the Central Business District, all of which is being accomplished without any "compelling State interest" on the part of the City of New Orleans, other than to grant economic favor to the Lucky Dog "hot dog vendors."

As to statements by the Court relating to the "test" as described in Morey, or the "standards" described in McGowen, there is the even more recent case which arose out of the Eastern District of Louisiana from a three-judge panel of Judges Rubin, Comiskey, and Circuit Judge Wisdom. This is the case of Cipriano v. City of Houma, 395 US 701, 89 S.Ct. 1897 (1969); lower court decision at 286 F.Supp. 823 (D.C.E.D. La. 1968). In the Cipriano case, supra, the three- judge panel ruled that the State of Louisiana could set its own standards as to how its people should determine the desirability of issuing public utility revenue bonds. The panel to which Circuit Judge Wisdom dissented, further ruled that the plaintiff, though a qualified voter, but not a property owner, could not participate in an election which required that he own property. The Court reversed the three-judge panel and apparently adopted the dissenting opinion of Circuit Judge Wisdom. This writer would quote the language of Cipriano in the lower court three-judge panel opinion for the reason that it sets out the standards mentioned in Morey and McGowan; and it is also reasonable to assume by the Court's reversal, that this language was given an "expanded import". District Judge Rubin, speaking for the majority, at Page 825 of 286 F.Supp. noted:

> "...the Equal Protection Clause does not command state legislatures to make their laws conform to hydraulic principles be seeking the common - and lowest - level. 'Equal Protection does not require identity of treatment. It only requires that classification rests on real and not feigned differences. That the distinction has some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification as to be wholly arbitrary.' Walters v. City of St. Louis, 1954, 347 US 231, 237, 74 S.Ct. 505, 509, 98 L.Ed. 660. In considering whether a classification rests on a real difference, we must take into account the nature and the relative importance of the subject with respect to which equality is asserted...."

And again at Page 826 of 286 F.Supp., Judge Rubin noted language which defined those "tests" or "standards" to be applied to any potentially "discriminatory law" as follows:

> "Mere classification does not of itself deprive a group of equal protection.[13] Older decisions taught us that legislation that differentiates between two classes is unconstitutional only if the discrimination is irrational, arbitrary or capricious.[14] Only a few weeks ago, the Supreme Court indicated that these principles are still vital. In holding that the one man, one vote principle of Reynolds v. Sims, was applicable to the selection of the Texas County Commissioners, it said, 'The Equal Protection Clause does not, of course, require the state never to distinguish between citizens, but only that the distinctions that are made should not be arbitrary or invidious.' Avery v. Midland County, Texas, 1968, 390 US 474, 88 S.Ct. 1114, 20 L.Ed.2d 45.[15]
>
> "...whether the distinction is invidious depends on the exact factual situation presented."

This writer submits we can assume that the above language of Judge Rubin was not specifically overruled by the Court in its reversalof Judge Rubin's decision. It appears, by this writer, that Judge Rubin, as indicated in the U. S. Supreme Court decision in Cipriano, ignored the very crucial "compelling

State interest" required as a further qualification of the standards cited in Morey and McGowen, as seems to be indicated at Page 1899 of 89 S.Ct. in Cipriano, as follows:

> "As we noted in Kramer, supra, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others,[4] 'the court must determine whether the exclusions are necessary to promote a compelling state interest.' Kramer v. Union Free School District No. 15, supra, at 627, 89 S.Ct. at 1890. Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because 'the question scheduled for the election need not have been sumbitted to the voters.' Id. at 629, 89 S.Ct. at 1890, M.11."

Further, the U. S. Supreme Court in Cipriano at Page 1900 of 89 S.Ct. noted as to the "compelling state interest", as follows:

> "...property owners, like non-property owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property tax payers. Indeed, the benefits and burdens of the bond issue fails indiscriminately on property owner and non-property owner alike.
>
> "Moreover, theprofits of the utility's operations are paid into the general funds of the city and are used to finance city services that otherwise would be supported by taxes. Of course, property taxpayers may be concerned with expanding and improving the city's utility operations; such improvements could produce revenues which eventually would reduce the burden on the property taxes to support city services. On the other hand, non-property taxpayers may feel that their interest as ratepayers indicate that no further expansion of utility debt obligations should be made. Of course, these differences of opinion cannot justify excluding either group from the bond election, when, as is this case, both are substantially effected by the utility operations. For, as we noted in Carrington v. Rash, 380 US 89, 94, 85 S.Ct. 775, 779, 13 L.Ed.2d 675 (1965), ' '[f]encing out' from the franchise a sector of the population because of the way they may vote is consitutionally impermissible.'
>
> "The challenged statute contains a classification which excludes otherwise qualified voters who are substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the state's sole justification for the statute is that the classification provides a 'rational basis' for limiting the franchise to those voters with a 'special interest', the statute clearly does not meet the 'exacting standard of precision we require of statutes which selectively distribute the franchise.' Kramer v. Union Free School District No. 15, supra, at 632, 89 S.Ct. at 1892. We therefore reverse the judgment of the District Court."

This writer submits that Cipriano indicated more of a concern for those "compelling state interests" than is initially indicated in Morey and McGowen. It is submitted that the Court, as of late, though it may be requiring the "burden of proof" to be carried by a person attacking a particular statute on "discriminatory grounds" it is leaning heavily to a consideration of the "compelling state interest", and relying heavily upon this consideration despite the fact that it grants the right to a legislature to "classify".

The Cipriano case mentioned the case of Kramer v. Union Free School District No. 15, 395 US 621, 89 S.Ct. 1886 (1969), which was apparently a companion case to Cipriano. In Kramer, there is language which is important to our considerations as it further defines the "test" of "standard" to be applied to potentially "discriminatory laws". At Page 1889 of 88 S.C.t, Justice Warren notes as to the "test", as follows:

> " 'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interest which the state claims to be protecting, and the interest of those who are disadvantaged by the classification.' Williams v. Rhodes 393 US 23, 30, 89 S.Ct. 5, 10, 21 L.Ed. 24 (1968)."

Kramer is the first clear indication of what can be reasonably assumed has been the process behind the "test" or "standard" to be applied to any potentially "discriminatory law". The language of Kramer as to the "facts and circumstances behind the law", indicates that the "legislative history" of any law, in this case, Chapter 46, § 1 of the Code of the City of New Orleans, is most important. The above capsulre of the "test" is perhaps the most concise statement of the process of the "test" to be found anywhere in the Supreme Court jurisprudence.

In each of the cases, i.e., Morey, McGowen, Cipriano, etc., this Court has required the "process" so succinctly outlined in Kramer as noted above. For example, the "facts and circumstances behind the law" were gone into in Morey at Page 1349 of 77 S.Ct., in terms of the "purpose of the Act's licensing and regulatory provisions...", as follows:

> "The purpose of the Act's licensing and regulatory provisions clearly is to protect the public when dealing with currency exchanges.[6] Because the American Express is a world-wide enterprise of unquestioned sovereignty andhigh financial standing, the state argues that the legislative classification is reasonable...."

Necessarily, the consideration of the "facts and circumstances behind the law" brings us to consider as in Morey, at Page 1350 of 77 S.Ct., the "differences that are reasonably related to the purposes of the Act" upon which the discrimination in the particular Act is based. As stated herein, these "distinctions" must be based upon "genuinely different characteristics of the business involved," as follows:

> "Of course, distinctions in the treatment of business entities engaged in the same business activity may be justified by

genuinely different characteristics of the business involved.[10] This is so even where the discrimination is by name.[11] But distinctions cannot be so justified if the 'discrimination has no reasonable relation to these differences.' Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 US 459, 463, 57 S.Ct. 838, 840, 81 L.Ed. 1223. In that case, this court held that a state statute which permitted mutual insurance companies to act through salaried, resident employees, but which excluded stock insurance companies from the same privileges, violated the Equal Protection Clause.

"The principals controlling the Smith & Hartford Co. cases, supra, are applicable here. The provisions in the Illinois Act, such as those requiring an annual inspection of licensed community currency exchanges by the State Suditor, make it clear that the statute was intended to afford the public continuing protection. The discrimination favored the American Express Company and does not conform to this purpose. The exception of its money orders apparently rests upon the legislative hypothesis that the characteristics of the American Express Company make it unnecessary to regulate their sales....

"The effect of the discrimination is to create a closed class by singling out American Express money orders. This singling out of the money orders of one company is in a sense the converse of a case like Cotting vs. Kansas City Stockyards Co., 183 US 79, 114-115, 22 S.Ct. 30, 44, 46 L.Ed. 92...."

It is to be noted at this point that though the language of Morey does not specifically mention the next criterion mentioned in Kramer, in regards to a "compelling state interest"; nevertheless, it is very clear from the language of Morey, which latter case deals with "distinctions in the treatment of business entities", as opposed to the discriminatory "voting laws" of Kramer, that this Court still will require a "compelling state interest". This is clear in the continuation of the last quote at Page 1351 of 77 S.Ct. of Morey, as follows:

"...see also, McFarlan V. American Suga Refinery Company, 241 US 79, 36 S.Ct. 498, 60 L.Ed. 899. In the Cotting case, this Court held that a regulatory statute that in fact applied to only one stockyard in a state violated the Equal Protection Clause. Although statutory discriminations creating a closed class have been upheld,[12] a statute which established a closed class was held to violate the Equal Protection Clause where, on its face, it was 'an apparent attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date.' Mayflower Farms, Inc. v. Penn Eyck, 297 US 266, 274, 56 S.Ct. 457, 459, 80 L.Ed. 675. The statute involved in that case granted a differential from the regulated price at which dealers could sell milk to those dealers in a specified class who were in business before April 10, 1933.

"Unlike the American Express Company, appellees and others are barred from selling money orders in retail establishments. Even if competing outlets can successfully be established as separate businesses, their ability to secure licenses depends upon the showing of 'convenience and advantage'. Perhaps the showing of such could not be made because the unregulated American Express Company had already established outlets in the community. And even if licenses were secured, the licensees would be required to pay licensing and investigatory fees and purchase surety bonds and insurance policy-costs that the American Express Company and its agents are not required to bear.[13] The fact that the activities of the American Express Company are far-flung does not minimize the impact on local affairs and on competitors of its sale of money orders in Illinois. This is not a case in which the Fourteenth Amendment is being invoked to protect a business from the general hazards of competition. The hazards here have their roots in the statutory discrimination.

"Taking all these factors in conjunction - the remote relationship of the statutory classification to the Act's Purpose or to business characteristics and the creation of a closed class by the singling out of the money orders of a named company, without accompanying economic advantages - we hold that the applications of the Act to appellees deprives them of the equal protection of the laws.[14]"

This writer submits that Appellee in the exact situation as were the companies other than the American Express Company described in Morey. However, in this case, Appellee is even in a more serious situation, being completely and totally excluded from the Central Business District; and being deprived of all economic advantages by not even being allowed to apply for a "permit" under Chapter 46, § 1 & 1.1 of the Code of the City of New Orleans. As was the case of the Illinois statute in Morey, this matter before the Court is "an attempt to give an economic advantage to those engaged in a given business ..." Further, the similarity to the Cotting Case, supra, cited in Morey, to out case is astounding. Appellee is confronted with a "grandfather clause" which is more restrictive than the "grandfather clause" in Cotting, which, at least, allowed individuals to remain in business, and made no attempt, as does Chapter 46, § 1 &1.1, to completely ELIMINATE and PROHIBIT the selling of "foodstuffs, novelties, etc." by Appellee while allowing, at the same time, "hot dog vendors" and "flower salespersons" to sell "foodstuffs and novelties".

Further, in support of the position stated above that this Court will still require a "compelling state interest" where there are "distinctions in the treatment of business entities" as opposed to discriminatory "voting laws," there is the very recent case in the U. S. Supreme Court of Weber v. Aetna Casualty & Surety Company, 406 US 164, 92 S.Ct. 1400 (1972). In that situation, the Court struck down a Louisiana law which prohibited recovery rights to dependent unacknowledged illegitimates as violative of the "Equal Protection Clause". In the Weber Case, there appears language at Page 1405 of 92 S.Ct. to indicate the necessity of a "compelling state interest" on behalf of the City of New Orleans to exclude Appellee from selling and distributing "foodstuffs and novelties" in an area where it allows other individuals to do the same, as follows:

> "Having determined that Levy is the applicable precedent we briefly reaffirm here the reasoning which produced that result. The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bears some rational relationship to a legitimate state purpose. Morey v. Dowd, 354 US 457, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957); Williamson vs. The Lee Optical Co., 348 US 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); Gulf, Colorado & Santa Fe R.R. Co. v. Ellis, 165 US 150, 17 S.Ct. 255, 41 L.Ed. 666 (1897); Yick Wo v. Hopkins, 118 US 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this court exercises a stricter scrutiny, Brown v. Board of Education, 347 US 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); Harper v. Virginia State Board of Elections, 383 US 663, 86 S. Ct. 1097, 16 L.Ed.2d 169 (1966). The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

This Court has not been satisfied with the simple "naming" of a "legitimate state interest" and will require that there be some showing of how the statute itself "promotes" that interest, as indicated at Page 1405 of 92 S.Ct., as follows:

> "The Louisiana Supreme Court emphasized strongly the state's interest in protecting "legitimate family relationships," 257 La. at 433, 242 So.2d at 550, and the regulation and protection of the family unit have indeed been a venerable state concern. We do not question the importance of that interest; what we do question is how the challenged statute will promote it. As was said in Glona:
>
> > '[W]e see no possible rational basis....for assuming that if the natural mother is allowed recovery for the wrongful death of an illegitimate child, the cause of illegitimacy will be served. It will, indeed, be far fetched to assume that women have illegitimate children so they can be compensated in damages for their death." Glona v. American Guaranty & Liability Ins. Co., supra, 391 US, at 75, 88 S.Ct. at 1516.'
>
> "Nor can it be thought here that persons will shun illicit relations because the offspring may not one day reap the benefits of Workmen's Compensation." (Own Emphasis)

The lack of a "compelling state interest" on the part of the City of New Orleans will be taken up later herein, but this writer cannot resist the temptation to point out that the only indication of the "compelling state interest" is that the "economic welfare" of the City of New Orleans rests upon the tourist trade, and that "no tourist or a citizen appreciates peddlers or hawkers", and the City has decided that "some peddlers" are to be allowed to peddle, but not the Appellee. Also, it is all right, the City holds, for the City Council to allow "peddlers" who have been "over a long period of time part of the charm and beauty that is the Vieux Carre." This rationalization is patently absurd. The "legislative history" of chapter 46, §1, belies the position of counsel for Appellant. The "legislative history" is simply a history of not knowing what to do for the "favored few". The criterion of "time" somehow making the Lucky Dog pushcarts more charming and attractive and a part of the Vieux Carre, is absurd. While one could agree with "regulation" of "food peddlers and novelty salesmen," one can never agree with what has apparently occurred, that is, "favoritism".

Finally, from the above, it appears that the "interest of those who are disadvantaged by the classification" is most important as noted in Weber at Page 1405 of 92 S.Ct., as follows:

> "The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?"

Needless to say, as will be shown herein, one of the most precious "fundamental personal rights", the right to earn a livelihood, is at stake.

From the above, it is apparent that there are no less than THREE CRITERIA by which this Court has been guided in consideration of "discriminatory laws", as follows:

FIRST CRITERION:

> The Facts and Circumstances Behind the Law - The Legislative History - The Differences Upon Which the Classification Rests

SECOND CRITERION:

> The Interest Which the State Claims to be Protecting - The Compelling State Interest

THIRD CRITERION:

> The Interest of Those who Are Disadvantaged by the Classification - The "Personal Rights" Endangered

FIRST CRITERION:

The Facts and Circumstances Behind the Law - The Legislative History - The Differences Upon Which the Classification Rests.

This criterion necessarily brings us to a consideration of the "purpose" of Chapter 46, §1 & §1.1, as noted previously in this Brief. The only indication of the "purpose" of the presently designated Chapter 46, §§ 1 & 1.1, appears in the initial CCS Ordinance #15,510, dated February 20, 1942, as appears in Appendix "A", herein. The preamble of that now ancient Ordinance is as follows:

"AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors or merchandise, solicitors, canvasses, etc., for the holding of fish frys, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing....."

"WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans, it is necessary that proper supervision and regulations be imposed on all persons, firms or corporations who in any way desire to use the public streets, sidewalks or other public places, or private or public halls for the conduct of any business or calling or the holding of any meetings or public entertainment; therefore...."

The original CCS Ordinance #15,510 went on to categorize certain activities and specify the amount of "permit fee" required in each case. As can be gleaned from a reading of this first Ordinance, it did not seek to PROHIBIT and ELIMINATE any particular activity, but only required that in the case of each particular activity, a "permit fee" be paid; thereby, this writer assumes, insuring that the City could have some ultimate control over the conduct of businesses upon its streets, a perfectly legitimate objective and classification by the City of New Orleans in 1942 in exercising its Police Powers as recognized in Morey.

Subsequent amendments to this original CCS Ordinance #15,510 appeared through CCS Ordinance #17,633, dated June 7, 1949, where photographers were required to pay a "permit fee". See "B". Further, the "purpose" of CCS Ordinance #15,510 was reiterated by virtue of CCS Ordinance #17,989, dated December 29, 1950. See Appendix "C". This purpose, with some minor changes, remained essentially the same as in the original ordinance. Also, in a legitimate exercise of "police power" the then Commission Council required automatic coin vending machines and "penny vending machines" to obtain a "permit."

The "revenue aspects" of original CCS Ordinance #15,510 were brought out by NCS Ordinance #217, dated November 18, 1954. See Appendix "D". There the City Fathers ordained that 25 cents should be added to each of the fees obtained in order to place it in the Police Pension Fund. The City Council by NCS Ordinance #3027, dated 1/28/65 (See Appendix "E") amended the obvious successor of old CCS ordinance #15,510, CCS, which from that time on would be identified by what we know it today, i.e., Chapter 46-1, of the Code of the City of New Orleans.

With the appearance of NCS Ordinance #4344 (See Appendix "F"), there first begins to appear the type of mentality required to put the present Chapter 46, §§1 & 1.1, in its present form. This particular ordinance added a rather interesting Paragraph 41 to the "permit law" which required that "pornography dealers" pay a $10,000.00 fee, a rather interesting requirement. Then there appears NCS Ordinance #4359 (See Appendix "G"), which simply added "transient vendors" at Mardi Gras to the list of persons required to obtain "permits". Further, as appears at Appendix "H", the City Council passed NCS Ordinance #4360, which deleted Paragraph 14 as a required permit, for no apparent reason. This permit dealt with canvasses, and the like. However, this Paragraph 14 dealing with canvasses was put back into the law by virtue of the next NCS Ordinance #4439 (See Appendix "I"), wherein the City Council apparently re-enacted the entire scheme of "permit fees", apparently increasing the required fees, and doing nothing else. Within this particular ordinance, there first appears a PROHIBITION against selling novelties, souvenirs, candies, nuts, etc. within two blocks of any elementary or secondary school while the school is in session. The obvious interest in this is most apparent and seems to be a very legitimate prohibition which applies to all vendors of these items. This writer simply points this out as a legitimate exercise of police authority, and this particular section has never been in question by Appellee.

Then again, the City Council took to regulating, not EXTINGUISHING, the "transient vendors" during Mardi Gras through Ord. 4555, NCS, dated 5/6/71, at Appendix "J".

IT IS IMPORTANT TO NOTE at this juncture of the Legislative History that up until this time and through the above ordinances, there was never any serious attempt to "discriminate" against any individual or person in favor of other individuals engaged in businesses in the Vieux Carre or the later expanded area of the Central Business District. Up until this time, the scheme of the Legislative History of Chapter 46, §§1 & 1.1 was to regulate not ELIMINATE, and FAVOR a few!

It is with the appearance of NCS Ordinance #4744 (See Appendix "K") that there is evidence of an effort to legislate for a "favored few". The City Council ordained by virtue of NCS Ordinance #4744, that all of the "permits" were invalid in the Vieux Carre area, except as provided in an additional

paragraph to Chapter 46-1 of the Code of the City of New Orleans. The category of "flower sales persons" was among the "exceptions" noted in Chapter 46, §1.1, together with the "hot dog vendors" of Paragraph 5; the Jackson Square artists of Paragraph 10; "supper ticket" salesmen for private homes of Paragraph 12; persons who sell goods or auction goods in bankruptcy proceedings contained in Paragraph 19; persons or groups who put on exhibitions, expositions and educational events where admissions are charged or solicited as appears in Paragraph 21; etc., all as appears above in this brief. It is interesting to note that the pornography outlets (Paragraph 41) were not excluded from the Vieux Carre. This writer submits that the City Council knew very well the consequences of trying to attempt to squelch First Amendment rights, and really did not want to "trifle" with that particular group of salesmen.

Therefore, with the addition of Section 1.1 to Chapter 46 of the Code of the City of New Orleans by virtue of MCS Ordinance #4744 (See Appendix "K"), there began to appear TWO CLASSES of "permit holders"; those "permit holders" who could operate in the Vieux Carre area later to be expanded to include the Central Business District, and those who could not. However, the DIFFERENCES upon which these two classifications were made are not only mysteriously unapparent from a reading of the law, but events subsequent to Ordinance 4744, MCS, in regard to Appellee indicate an "intent" or "purpose" other than that admitted by the City in its Memorandum. Though one would assume that Appellee would be able to qualify under MCS Ordinance #4744 with her pushcarts for a "permit" to allow her to sell "hot dogs and hot tamales" and enjoy the "exception," Appellee's Business Manager was arrested for violation of the foregoing Chapter 46, §1 & 1.1, as amended by Ordinance 4744 of the Code of the City of New Orleans.

This writer submits that it is impossible to believe that there were any REAL DIFFERENCES in the identities and functions and activities of Appellee and the Lucky Dog "hot dog vendors" at the time of MCS Ordinance #4744, so as to justify the arrest of Appellee's Manager. Of course, as noted herein, the charges were dismissed.

Further indication of the obvious "intent" and "purpose" of this scheme of insidious legislative chicanery revealed itself in the form of

further amendments dealt with above in this brief, to-wit: the April, 1972 MCS Ordinance #4822, where the "Grandfather Clause" first appeared, and the subsequent effort to "cover their tracks" in MCS Ordinance #4957, where the "hot dog vendor exemption" in ¶(V) was deleted. This writer has treated these matters above and will not reiterate them again except by mentioned them in passing.

As noted in Weber, the simple "naming" of a "legitimate state interest" is not sufficient. There must be a showing of how the ordinance itself "promotes" that particular interest. This brings us back to the REAL DIFFERENCES between Appellee's pushcart food distribution scheme and that of the Lucky Dog "hot dog vendors".

Are we to believe, as suggested by the City, that the City has the right to allow "some peddlers" and at the same time disallow the Appellee, simply because "some peddlers," i.e., Lucky Dog hot dog vendors, have been in the Vieux Carre for such a long period of time so as to "become a part of the charm and beauty that is the Vieux Carre?" Such reasoning is not only spurious, but laughable. It is pure "slapstick comedy" rationale. The City of New Orleans is suggesting that mere "length of time" somehow turns an often illpainted, shabby, Lucky Dog pushcart from which the odor of stale buns and second grade hot dog meat emanates into an acceptable "sight" for tourists, as opposed to Appellee's pushcarts.

Though one could perhaps grant that there are "real differences" between the sale and distribution of"flowers" as opposed to the sale of "foodstuffs", one cannot concede any differences between the sale of Lucky Dog hot dogs and the sale of Appellee's hot dogs, etc., merely because Lucky Dog hot dogs have been in the Vieux Carre area for "a long period of time", and somehow have "become a part of the charm and beauty that is the Vieux Carre."

What has been described thus far as the "Grandfather Clause" is, in essence, no "Grandfather Clause" at all. It was merely an attempt to provide a "place in the sun" for the "favored few," one of whom was the Lucky Dog vendors to the exclusion of everyone else. This is borne out in State Court cases which specifically dealt with "Grandfather Clauses" and for purposes of

this brief are important for information and their reasoning. Both of these cases are reported from the Supreme Court of Florida.

In Eslin v. Collins, 108 So.2d 889 (1959), the Florida State Supreme Court held as unconstitutional a "Grandfather Clause" which operated exactly as the "Grandfather Clause" of Chapter 46, §§1 & 1.0. In declaring it uncon0 stitutional, the Supreme Court of Florida called upon those principals enunciated in Morey, McGowen, Cipriano, Weber, et al., noted above. What is important to us is the definition cited by the Court as Page 890 of 103 So.2d, as follows:

> "....Ordinarily, as applied to the regulation of a profession, a Grandfather Clause exempts from the examination pre-requisite to obtaining a license, those who were already bona fide engaged in the practice of a profession being regulated for the first time. See State ex rel. Garrison v. Reeve, 104 Fla. 196, 139 So. 817, 79 A.L.R. 1119; Doller v. Reid, 1948, 308 Ky. 348, 214 S.W.2d 584; Watson v. State of Maryland, 1910, 218 US 173, 30 S.Ct. 644, 54 L.Ed. 987; Bent v. State of West Virginia, 1889, 129 US 114, 9 S. Ct. 231, 32 L.Ed. 623. 'Such exception proceeds upon the theory that those who have acceptably followed the profession in the community for a period of years may be assumed to have the qualifications which others are required to manifest as a result of an examination before a board of medical experts.' ...." (Own Emphasis)

After defining a Grandfather Clause the Florida State Supreme Court went on to note in regards to the Act under attack that it not only created a "closed class of specially licensed naturopaths who had been practicing for more than two years on October 1, 1957, it also created a close class within that class, consisting of naturopaths who had been licensed and practicing for at least 15 years as of that date." As appears at Page 891 of 108 So.2d. The Florida State Court went on to note on Page 891 that the law treated those naturopaths who had been licensed two years differently and unequally from those who had been licensed for at least 15 years as of the cutoff date cited therein. Further, the Florida Supreme Court went on to note that in each case, the naturopaths, whether they had been practicing and licensed for two years or fifteen years, had received approximately the same type of training. The Florida Supreme Court at Page 891 went on to note:

> "We can conceive of no reasonable basis for the classification here attempted to be made. Both classes of naturopaths were required to take the same training and pass the examination required as a condition of obtaining a license to practice naturopathy."

Further, at Pages 891 and 892 of 108 So.2d, the Florida Supreme Court went on to reason further as to why that particular Grandfather Clause was improper, which reasoning is particularly applicable to our situation and speaks to our immediate problem, as follows:

> "The purpose of the purported"grandfather clause' of the Act was to save the right of naturopaths licensed for more than two years to continue in the practice. Assuming without deciding that the legislature could validly create such a closed class, we can conceive of no reasonable basis for the attempt here made to grant special privileges to a limited group, itself a closed class, within the larger closed class. Accordingly, it must be held that the legislative classification is arbitrary and unreasonable and thus a denial to the appellant of the equal protection of the law. See Riley v. Lawson, 106 Fla. 521, 143 So. 619; State ex rel Voris v. Knott, 135 Fla. 206, 184 So. 752; Morey v. Doud, 1957, 354 US 457, 469, 77 S.Ct. 1344, 1 L.Ed.2d 1485; 11 Am.Jur., Constitutional Law, §285, p. 1046."

Turning to our Chapter 46, §§1 & 1.1, there is indeed a great deal of similarity between the Act declared unconstitutional by the Florida Supreme Court and the Municipal Ordinance which Appellee is now attacking. For the foregoing reason, the rationale of the Florida Supreme Court in the Eslin Case, supra, is applicable herein.

This writer submits that the reasoning of the Florida court is the correct reasoning to be applied to Municipal Ordinance, Chapter 46, §§1 & 1.1. In Eslin there was involved the licensing of a profession, naturopathy. In this case herein, there is involved the licensing of "hot dog vendors". In each instance, the profession or "calling" had to meet certain standards. In the case of the "hot dog vendors," there are certain minimal standards of behavior and cleanliness which would have to be met in accordance with the applicable "Health Laws" of the City of New Orleans. Within each of the professions or "callings," there was a similarity of training and background. There was absolutely no difference between the "two year" and"fifteen year" naturopath. There certainly is no difference between the Lucky Dog "hot dog vendors" and Appellee's "hot dog vendors." Most importantly, in the case of the naturopaths, the legislature sought to create a class within a closed class. Similarly, the City of New Orleans seeks to create a class within a class. Not only does the City seek to make certain "exceptions" within the Vieux Carre area initially and later within the entire Central Business District, but it goes on further to create a special class of "hot dog vendors" who have been in the Vieux Carre and Central Business District for more than eight years. The

reasoning of Eslin is compelling to our present situation.

As a point of information, this Court's attention is further directed to another Florida case, that of Midstate Hauling Co. v. Mason, 177 So.2d 206 (1965), where the real intent and purpose of "grandfather clauses" is again described at Page 210 thereof as follows:

> "...We cannot emphasize too greatly the fact we are dealing essentially with the so-called Grandfather Clauses. The whole purpose of a Grandfather Clause in a licensing statute is to exempt from statutory regulation, imposed for the first time those persons already in the field who have followed the trade and may be presumed to possess necessary qualifications. In the case of Commonwealth Air Transport v. Stuart, 303 Ky. 69, 196 S.W.2d 866, at Page 869, the Kentucky Court said:
>
> > 'In initial regulatory statutes they [grandfather clauses' satisfy "the dictates of fairness by affording sanction to enterprises heretofore established". United States v. Maher, 307 US 148, 59 S.Ct. 768, 771, 83 L.Ed. 1162. They [grandfather clauses] serve to avoid hardships which would result from forcing a carrier to justify his existing business in terms of public convenience, and recognizes vested such rights as had grown up before the enactment of the statute.' "

The Florida Supreme Court in MidState went on to cite Eslin and the language noted above.

From all of the above citations, it is fair to state that "Grandfather Clauses" are legitimate if they are utilized as described in Maher, Midstate and Eslin; that is, to avoid hardship to those individuals already in business and recognize that "vested interest" in not having to completely rearrange and adjust their business activities. But, in our case, Chapter 46, §§1 & 1.0, we do not have an effort to enact a true "Grandfather Clause" as commonly understood by this Court, the Supreme Court of Kentucky and the Supreme Court of Florida. What we have is an obvious effort to DISENFRANCHISE and ELIMINATE the business operations of Appellee on the flimsy basis that the Lucky Dog salesmen had "over a long period of time become a part of the charm and beauty that is the Vieux Carre." There is absolutely no "real difference" between the operations of the Lucky Dog "hot dog vendors" and Appellee. Both use "pushcarts." Both sell and distribute "foodstuffs." Both as admitted by the City in all of its pleadings had been in business pursuant to "valid mayorality permits in 1972."

Considering the fact that the "sales personnel" for both Lucky Dog and Appellee are likely to be more of a "transient type", there is no legitimacy in any argument that somehow "hot dog salesmen" obtain NECESSARY QUALIFICATIONS by virtue of their association with one company which has been in business for "eight years" prior to January 1, 1972, other than a company which has been in business for "one year", prior to January 1, 1972. Assuming, for the sake of argument, that each and every salesman of the Lucky Dog "hot dog vendor" business scheme had been with the company since its inception approximately eight or nine years prior to January, 1972, there is no reason to assume that these "hot dog salesmen" would be better qualified to sell hot dogs than the "hot dog salesmen" working for Appelle for two years prior to January, 1972. What does eight years do for a "hot dog salesman"? Is that veteran of eight years ofhot dog sales more qualified to "spread the mustard" than the veteran of only one year hot dog salesmanship? Obviously, there are no "necessary qualifications" gained by people, whether they work for eight years or one year at selling hot dogs which could be pointed out as the "real differences" upon which the City Fathers discriminated against Appellee. The fact is, THERE ARE NO REAL DIFFERENCES upon which the City Council could have based any legislation which not only created a "closed class of exceptions" within the Vieux Carre and later the Central Business District, but created another "closed class" within the class of 'hot dog vendors" which could potentially sell hot dogs in the French Quarter and the Central Business District.

This writer submits that the City Council was apparently uninterested in any REAL DIFFERENCES between the Lucky Dog vendors and Appellee's vendors. It was only interested in granting an ECONOMIC ADVANTAGE to the Lucky Dog vendors. Again this was not based upon any REAL DIFFERENCE between either party. It is submitted that the Legislative History as appears from the above indicates a scheme to grant ECONOMIC ADVANTAGE to a "favored few", and this was done without consideration of any LEGITIMATE or REAL DIFFERENCES between the Lucky Dog vendors and Appellee.

SECOND CRITERION:

The Interest Which the State Claims to be Protecting -
The Compelling State Interest

The only indication of the "compelling state interest" that prompted the City Council for the City of New Orleans to gerrymander good reason and

sense in bringing Chapter 46, § 1 & 1.1 to their present state appears in the Memorandum of the City Attorney in support of his Motion for Summary Judgment and is quoted here in its entirety for whatever it is worth, as follows:

> "The interest of the City of New Orleans and the State of Louisiana are vitally affected as regards to that section known as the Vieux Carre. The economic welfare of the City of New Orleans rests on this specially designated area. It is the heart of the City's tourist industry. The incalculable value of this tourist trade prompted the City Council to adopt ordinances to preserve the integrity and to insure the economic viability of the area in a way most conducive to both tourists and citizen alike. No tourist or citizen appreciates peddlers or hawkers interferring with their rights to observe and to enjoy the beauties of the New Orleans Vieux Carre. The fact that some peddlers are allowed to peddle and not the plaintiff in this action only tends to demonstrate the City Council's interest in keeping the Vieux Carre the tourist attraction it has always been. The Council sought to allow those peddlers to remain who have over a long period of time become a part of the charm and beauty that is the Vieux Carre. The City should not be caused to lose its entire remedial scheme because it failed to cover every peddler at one time ..."

A repetition of the above reasoning on the part of the Appellant-City appears at page 17 of Appellant-City's brief which was referred to the Court.

What the City has obviously failed to grasp is the fact that the mere "naming" of a "compelling state interest" does not somehow magically pass a "discriminatory scheme" into the safe harbor of constitutionality. Again, the Weber case, supra, is cited, particularly its language as appears at Page 1405 of 92 S.Ct., as follows:

> "The Louisiana Supreme Court emphasized strongly the state's interest in protecting 'legitimate family relationships', 257 La. at 433, 242 So.2d at 550, and the regulation and protection of the family unit have indeed been a venerable state concern. We do not question the importance of that interest; what we do question is how the challenged statute will promote it. As was said in Glona:
>
> > '[W]e see no possible rational basis ... for assuming that if the natural mother is allowed recovery for the wrongful death of an illegitimate child, the cause of illegitimacy will be served. It will, indeed, be far-fetched to assume that women have illegitimate children so they can be compensated in damages for their death.' Glona v. American Guaranty & Liability Ins. Co., supra, 391 US at 75, 88 S.Ct. at 1516.
>
> "Nor can it be thought here that persons will shun illicit relations because the offshpring may not one day reap the benefits of Workmen's Compensation."

Thus, the "economic welfare of the City of New Orleans" is indeed as was the "legitimate family relationships" in Weber, a "venerable state concern". However, as in the case of Weber, the process whereby this "venerable City concern" is implemented by this Ordinance which completely ignores any "real differences" is beyond this writer. Granted, "no tourist or citizen appreciates peddlers or hawkers interferring with their rights to observe and to enjoy the beauties of New Orleans Vieux Carre." But how does the allowance of Lucky Dog "hot dog vendors" to the EXCLUSION of Appellee's "hot dog vendors" give tourist or citizen immunity from interference with their "rights to observe and to enjoy the beauties of the New Orleans Vieux Carre"? Obviously, this is a spurious argument and overlooks the fact that any "improper behavior" that would in fact interfere with a tourist or citizen can be easily handled by the laws on the books of the Code of the City of New Orleans and the State of Louisiana. Assuming that the City of New Orleans through its "permit laws" can control the number and quality and integrity of its "hot dog vendors", any argument that there will be an overage of "hot dog vendors" and somehow they will be "getting in the way" of citizen and tourist is made spurious.

There is no question that the City of New Orleans can REGULATE, but there is indeed serious question that it can ELIMINATE without any SUBSTANTIAL and REAL DIFFERENCES upon which to eliminate businesses which prior to a law had been lawfully engaged. You cannot simply take away the "vested interest" of a citizen to earn a living simply because it suits the unsubstantial convenience of the City of New Orleans.

Not only does the law require that the legislative authority use proper means to protect its "compelling state interest", but as indicated above, whatever "classification" is set up, the "classification" must first be reasonably designed to effect the purpose of protecting "compelling state interest", and secondly, and just as important, the "classification" must be based upon REAL DIFFERENCES. As shown above, to allow one group of "peddlers and hawkers" in an area to theEXCLUSION of another group of "peddlers and hawkers", is certainly not eliminating the "peddlers and hawkers" problem, or whatever one chooses to describe it as. Further, if allowing one group of "peddlers and hawkers" to remain in an area to the exclusion of other groups of "peddlers and hawkers" can in any way be assumed to protect the "economic welfare of the City of New Orleans", then the "classification" which effects this EXCLUSION must be based upon REAL DIFFERENCES between the groups. As indicated above, the latter consideration is indeed failing on the part of Chapter 46, § 1 & 1.1. This writer has already dealt with the fact that a supposed veteran of eight years of hot dog sales is no more qualified to spread mustard that a veteran of only one year of hot dog sales.

If we were to follow the reasoning put forth by the City of New

orleans via its pleadings, then the City need only identify one of its real "compelling interests" and by whatever means it desires, proceed to implement it. Thus, by the reasoning of the City it would be perfectly acceptable for the City in realization of its "compelling interest" to promote the economic welfare of the City to declare that anyone who wants to go into business have to do business in areas which the City thought were most lucrative for the benefit of the City. The City would have us believe that it simply has to identify a "compelling city interest" and proceed to implement that interest in whatever way pleases it. Thus, by ELIMINATING the business activities of Appellee in a particular area while allowing the Lucky Dog "hot dog vendors" to flourish. The City would have us believe that there is a problem with the "peddlers and hawkers" and that though the Lucky Dog "hot dog vendors" are part of the group of "peddlers and hawkers", their presence will somehow solve the "peddlers and hawkers" problem as far as interferring with the citizens and tourists rights to observe the beauty and charm of the Vieux Carre.

In essence, the City of New Orleans asked us to believe that it is attempting to solve the "peddlers and hawkers" problem by installing a group of "hot dog peddlers", while at the same time excluding all other "hot dog peddlers" such as Appellee. THIS IS ABSURD. And again, the Court is reminded that even if this were a way to get rid of the "peddlers and hawkers", the "classification" by virtue of the "grandfather clause" and the "exceptions" is not based upon any REAL DIFFERENCES between the Lucky Dog vendors and Appellee's vendors.

THIRD CRITERION:

The Interest of Those Who are Disadvantaged by the Classification - The Personal Rights Endangered

The basic right involved herein is that one upon which, in these United States, rests not only most of our personal liberties, but the very economy and economic well-being of the country. No less than Appellee's right to earn a living is involved herein.

This Right to Earn a Living is so deeply rooted in our political and economic history that reference to it can be readily found from the most ancient jurisprudence. In discussing the "Privileges and Immunities" to which all citizens are entitled, Circuit Judge Washington in Corfield v. Coryell, C.C.,E.D.Pa., 1823, 6 Fed.Cas. 546, indicated at Pages 551 and 552, as follows:

> "The next question is, whether this act infringes that section of the constitution which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?' The inquity is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principals are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government, the enjoyment of life and liberty with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeus corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elected franchise, as regulated and established by the laws of the Constitution of the state in which it is to be exercised." (Own emphasis)

It is to be noted that most of the Privileges and Immunities recognized in the Corfield Case, supra, are such that deal with the acquisition of property particularly the RIGHT TO EARN A LIVELIHOOD. This RIGHT TO EARN A LIVELIHOOD is certainly not a "right" to be ignored.

Later decisions, particularly the decision ofter referred to in dealing with "discriminatory laws" have reaffirmed this RIGHT TO EARN A LIVELIHOOD. Specifically, Yick Wo v. Hopkins, 117 US 566, 6 S.Ct. 1064 (1886), recognized as "fundamental" the RIGHT TO EARN A LIVELIHOOD as appears at Page 1071 thereof as follows:

> ".... but the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the Government of the Commonwealth 'may be a government of laws and not of men'. For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

It should be noted that Appellee concedes that the City of New Orleans may REGULATE, but she absolutely refuses to recognize in any way the right of

the City of New Orleans to completely ELIMINATE her RIGHT TO EARN A LIVELIHOOD, as is the case herein. Referring to Yick Wo, at Page 1071, 6 S.Ct., though speaking of the "elective franchise", the language that appears therein as to "regulation" is most appropriate to our instant case. Immediately after the above quotation in Yick Wo and beginning with the next paragraph at Page 1071, 6 S.Ct., the Court went on to note:

> "There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of boting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society, according to its will, under certain conditions, nevertheless, it is regarded as a fundamental political right, because preservative of all rights. In reference to that right, it was declared by the Supreme Judicial Court of Massachusetts, in Capen v. Foster, 12 Pick. 485, 488, in the words of Chief Justice Shaw, 'that in all cases where the Constitution has conferred a political right or privilege, and where the Constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations, and regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right in a prompt, orderly, and convenient manner;' nevertheless, 'such a construction would afford no warrant for such an exercise of legislative power as, under the pretense and color of regulating, should subvert or injuriously restrain, the right itself.'"

The above immediate quote was speaking of another "fundamental right" that of the "elective franchise". However, the language from the above quote and the one preceding it from Yick Wo, indicate that another "fundamental right" is the RIGHT TO EARN A LIVELIHOOD, and the smae standards that are applied to the right of the "elective franchise" are to be applied to the RIGHT TO EARN A LIVELIHOOD. It is a certainty, that while the State has a right to REGULATE it does not have a right ... "under the pretense and color of regulating ... [to] subvert or injuriously restrain, the right itself." This is precisely what the City of New Orleans is seeking to do under the guise of REGULATION. In fact, it is making absolutely no attempt to hide the fact that it is not REGULATING, but it is in fact, ELIMINATING the "fundamental right" of Appellee TO EARN A LIVELIHOOD.

This same reasoning has been carried forward by such cases as New State Ice Co. v. Liebmann, 285 US 352, 52 S.Ct. 371 (1932), where at page 374 thereof, the Court pointed out:

> "Plainly, a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistent with the Fourteenth Amendment. Under that amendment, nothing is more clearly settled than that it is beyond the power of a state, 'under the guise of protecting the public, arbitrarily [to] interfere with the private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'"

And more recently, in the case of Shapiro v. Thompson, 394 US 618, 89 S.Ct. 1322 (1969), the U. S. Supreme Court reiterated the logic of Corfield, Yick Wo, New State Ice Co., and others, in regards to what a state, or in this case a City, can do to basic Constitutional rights. Shapiro even recognizes Corfield at footnote 8 as appears at Page 1329 of 89 S.Ct. in reiterating the "fundamental rights" to which any citizen is entitled. Further, at Page 1331, of 89 S.Ct., the Court reiterates all of what has been traced above, but speaks in terms of "compelling governmental interest", as follows:

> "At the outset, we reject appellant's argument that a mere showing of the rational realtionship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification ... (citations) ... The waiting period provision denies welfare benefits to otherwise elligible applicants solely becuase they have recently moved into the jurisdiction. But in moving from the state to state or to the District of Columbia, appellees were exercising a constitutional right, and any classification which serves to penalize their exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional .., (citations)..."

Again, and more recently, the U. S. Supreme Court has indicated that it will not tolerate any interference with the "fundamental rights" such as the right to earn a livelihood unless there can be shown some "compelling state interest", or in this case, "compelling city interest", none of which exists as indicated above in this instance.

C O N C L U S I O N

The City of New Orleans through Chapter 46, § 1 & 1.1 of the Code of the City of New Orleans seeks, not merely to REGULATE, but ELIMINATE the legitimate business activities of Appellee, which prior to 1972 had been condoned by the City in the very area where Appellee is now prohibited from selling "hot dogs". Though the Appellee is not in the business of "selling diamonds", the sale of hot dogs is important to her as would be the sale of precious stones to a diamond merchant. Nevertheless, the Constitution of the United States does not look qualitatively at a man's livelihood and ask what is the price of his wares and judge his right to sell them on the basis of their value or lack of value. The United States Constitution guarantees the right to EARN A LIVELIHOOD regardless of how humble it may be.

There certainly is a "compelling interest" on the part of the City of New Orleans to protect its "economic welfare", and particularly as it exists in the Central Business District. However, there can be no conceivable "compelling state interest" to solve the "peddlers and hawkers" problem by placing a "hot dog peddler", i.e., Lucky Dog, in the Central Business District, and at the same time excluding Appellee from peddling her hot dogs. Further, this "classification" by means of a "grandfather clause" rests upon no REAL DIFFERENCE between Lucky Dog "hot dog vendors" and Appellee's "hot dog vendors". They are both "hot dog peddlers", and neither has any more facility than the other to deliver their hot dogs to the waiting, anxious and hungry hoards of "tourists and citizens" who want to "observe the charm and beauty that is the Vieux Carre" (also the Central Business District), while stuffing what probably is a second-grade hot dog dripping with chili, mustard and onions down their esophagi, all of which, we can all concede, promotes the "economic welfare" of the City of New Orleans.

Respectfully submitted:

JOSEPH NEVES MARCAL, III
Attorney for Appellee
2176 Esplanade Avenue
New Orleans, Louisiana 70119
Phone: (504) 581-7331

C E R T I F I C A T E

The undersigned hereby certifies that a true and correct copy of the above and foregoing has been served on every counsel of record by depositing same in the United States mail, postage prepaid, properly addressed this 19th day of March, 1975.

JOSEPH NEVES MARCAL, III

APPENDIX "A"

13510.

Mayor—Pty of New Orleans,
City Hall, Feb 20, 1942
Calendar No 16,215

NO. 13,510 COMMISSION COUNCIL SERIES

AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of auction sales, shows, circuses and the holding of meetings, rallies and public entertainments, etc. and repealing Ordinances Nos. 14,294 14,302, 14,434 and 13,747 C. C. S. and any and all ordinances and parts of ordinances in conflict herewith

WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans it is necessary that proper supervision and regulations be imposed on all persons, firms or corporations, who in any way desire to use the public streets, sidewalks, or other public places, or private or public halls for the conduct of any business or calling, or the holding of any meetings or public entertainment; therefore

SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That from and after the passage of this ordinance, every person, firm or corporation, who shall desire to use the public streets, sidewalks or public places for the conduct of any business or calling, or to hold meetings or rallies or public entertainments in private or public halls, shall first apply to and obtain from the Mayor of the City of New Orleans a permit according to the following schedule which permit shall in each instance state the occasion for which it is issued and the length of time for which said permit shall be operative, and which shall be paid for at the time of [illegible]

[illegible] by the [illegible]

[illegible] to the [illegible]

A—To sell Novelties, Candies, Cigars, Cigarettes, Cakes, Candy Floss, Popcorn, Peanuts, Fruit, Vegetables, Cut Flowers, Soft Drinks, Ice Cream, Ice Cream Bars, Sandwiches, Hot Dogs, Hot Tamales, Hot Coffee, Hot Chocolate, Hot Tea, Hot Soup, Hot Chili, Hot Barbecue, Hot Meat Pies, Hot Fish, Hot Oysters, Hot Shrimp, Hot Crabs, Hot Crawfish, Hot Gumbo, Hot Stew, Hot Roasted Corn, Hot Roasted Peanuts, Hot Roasted Pecans, Hot Roasted Almonds, Hot Roasted Cashews, Hot Roasted Walnuts, Hot Roasted Filberts, Hot Roasted Pistachios, Hot Roasted Macadamias, Hot Roasted Brazil Nuts, Hot Roasted Hazelnuts, Hot Roasted Chestnuts, Hot Roasted Pine Nuts, Hot Roasted Sunflower Seeds, Hot Roasted Pumpkin Seeds, Hot Roasted Watermelon Seeds, Hot Roasted Cantaloupe Seeds, Hot Roasted Honeydew Seeds, Hot Roasted Casaba Seeds, Hot Roasted Crenshaw Seeds, Hot Roasted Persian Seeds, Hot Roasted Canary Seeds, Hot Roasted Thistle Seeds, Hot Roasted Millet Seeds, Hot Roasted Rape Seeds, Hot Roasted Flax Seeds, Hot Roasted Hemp Seeds, Hot Roasted Poppy Seeds, Hot Roasted Sesame Seeds, Hot Roasted Anise Seeds, Hot Roasted Caraway Seeds, Hot Roasted Coriander Seeds, Hot Roasted Cumin Seeds, Hot Roasted Dill Seeds, Hot Roasted Fennel Seeds, Hot Roasted Mustard Seeds, Hot Roasted Parsley Seeds, Hot Roasted Sage Seeds, Hot Roasted Savory Seeds, Hot Roasted Thyme Seeds, Hot Roasted Basil Seeds, Hot Roasted Marjoram Seeds, Hot Roasted Oregano Seeds, Hot Roasted Rosemary Seeds, Hot Roasted Tarragon Seeds, Hot Roasted Chervil

SECTION 5. BE IT FURTHER ORDAINED, ETC., That in order to [illegible] the City of New Orleans, [illegible] shall apply to the Mayor of the City of New Orleans for a permit for [illegible] and said permit for [illegible] shall be issued only after the following information shall have been received from the applicant:

A—[illegible] and address of [illegible]

B—Kind and character of the [illegible] goods, foods, or effects to be sold.

C—Location or route over which the peddler intends to sell or distribute his wares, provided that in no instance shall any person having a bad character be permitted to obtain a permit.

SECTION 3. BE IT FURTHER ORDAINED, ETC., That permits to [illegible] under the authority of this ordinance, shall be non-[illegible] and [illegible]

[illegible] non-transferable, either as to individuals or as to location.

SECTION 4. BE IT FURTHER ORDAINED, ETC., That the Mayor shall prescribe such other rules and regulations as to the form of application for permits and their issuance, as may be required to carry out the full intent and purpose of this ordinance.

SECTION 5. BE IT FURTHER ORDAINED, ETC., That the Mayor may designate a director of permits who, subject to the direction of the Mayor, shall function as the head of the Permit Division and who shall sign all permits. The Mayor may also designate such inspectors, clerks and other assistants that may be necessary for the proper conduct of the Permit Division and shall fix their salaries.

SECTION 6. BE IT FURTHER ORDAINED, ETC., That it shall hereafter be the mandatory duty of the Director of Permits to transmit, day by day as received by him, to the City Treasurer, all monies and fees received for the issuance of the aforesaid permits; and the City Treasurer upon the receipt of said monies and fees shall immediately deposit same in a special account to be kept separate and apart from the other funds of the City, to be designated as the "Permit Fund Account" from which special account disbursements shall hereafter be made by the City Treasurer as provided in this section of this ordinance.

It is hereby ordered that all monies and fees now on hand in the accounts kept by the Director of Permits heretofore collected by him for the issuance of permits, shall forthwith be transferred by the Director of Permits to the City Treasurer for deposit in the aforesaid account, provided however, that out of said monies and fees now on hand, and in the possession of the director of permits, there shall be retained by him the sum of five thousand ($5,000.00) dollars which amount shall then constitute the Contingent Fund of the Mayor to be expended by the Mayor at his discretion.

Whenever the said Contingent Fund of five thousand ($5,000.00) dollars herein ordered retained by the Director of Permits shall become exhausted or reduced to less than five thousand ($5,000.00) dollars, upon proper requisition made by the Director of Permits to the City Treasurer, duly approved by the City Auditor, the Director of Permits is authorized to warrant from, and the City Treasurer is authorized to pay out of the aforesaid "Permit Fund Account" an additional sum of five thousand ($5,000.00) dollars, or such additional sum as may be necessary to bring the Mayor's Contingent Fund again up to the sum of five thousand ($5,000.00) dollars and additional requisitions by the Director of Permits for similar amounts may be made thereafter under the same conditions aforesaid, whenever conditions require that the said Contingent Fund be replenished.

SECTION 7. BE IT FURTHER ORDAINED, ETC., That any person, firm and corporation violating the foregoing section of this ordinance or any of the regulations prescribed in order to carry out its true intent and purpose shall be subject to a fine of not more than twenty-five ($25.00) dollars or imprisonment for not more than thirty (30) days or both, at the discretion of the Judge hearing jurisdiction over such violation; and each offense shall constitute a separate violation.

SECTION 8. BE IT FURTHER ORDAINED, ETC., That Ordinances Nos. 14,294; 14,332; 14,434 and 15,347 C. C. S., and all other ordinances or part of ordinances in conflict with provisions of this ordinance be, and the same are hereby repealed.

All permits for fruit, fruits and vegetables shall first be approved by the Market Director.

(Adopted by the Commissioners Council of the City of New Orleans, Feb. 20, 1942.

G. E. WEAVER,
Clerk of Commissioners Council.

Approved Feb. 20, 1942.
ROBT. S. MAESTRI,
Mayor.

A True Copy:
M. E. WRIGHT,
Acting Secretary to the Mayor

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APPENDIX "B"

17,633

Mayoralty of New Orleans,
City Hall, June 7, 1949.
Calendar No. 18,430.

NO. 17,633 COMMISSION COUNCIL SERIES.

BY MAYOR MORRISON:

AN ORDINANCE to amend Section 1, Paragraph "P" of Ordinance No. 15,510 C. C. S., commonly known as the Mayoralty Permit Ordinance.

SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That Paragraph "P" of Section 1 of Ordinance No. 15,510 C. C. S., be, and the same is hereby amended to read as follows:

"P-1. To take and sell photographs on City streets or other public places where parties photographed willingly pose for picture and picture is developed on spot where taken and there delivered to parties photographed $ 5.00

"P-2 To take and sell photographs on City Streets or in any other public places in any other manner than that described in the preceding paragraph 250.00

Adopted by the Commission Council of the City of New Orleans, June 17, 1949.

G. S. WEAVER,
Clerk of Commission Council.

Approved June 17, 1949.

deLESSEPS S. MORRISON,
Mayor.

A true copy:
W. J. ERIKSON,
Secretary to the Mayor.

APPENDIX "C"

17,989

Mayoralty of New Orleans,
City Hall, December 29, 1950.
Calendar No. 17,501.
NO. 17,969 COMMISSION COUNCIL SERIES.
By Mayor Morrison:
AN ORDINANCE to amend the title, the preamble and Section 1 (as such Section was last amended by Ordinance No. 16,865, C. C. S.) of Ordinance No. 15,510, C. C. S., entitled,
"An Ordinance regulating and fixing the cost of permits to be issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347, C. C. S., and any and all ordinances and parts of ordinances in conflict herewith."
SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That the title of Ordinance No. 15,510, C. C. S., be and the same is hereby amended to read as follows:
"AN ORDINANCE regulating and fixing the cost of permits to be issued to any person, firm, corporation, or partnership, operating merchandise vending machines, and other vendors of merchandise, solicitors, canvassers, etc., and for the holding of fish fries, parades, circuses, meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347, C. C. S., and any and all ordinances or parts of ordinances in conflict therewith.
SECTION 2. BE IT FURTHER ORDAINED, ETC., That the preamble of Ordinance No. 15,510, C. C. S., be and the same is hereby amended to read as follows:
"WHEREAS, in order to safeguard public safety, health, comfort and the general welfare of the people of New Orleans it is necessary that proper supervision and regulations be imposed on all persons, firms, corporations, or partnerships, who in any way desire to use the public streets, sidewalks, or other public places, or private places, or public halls for the conduct of any business or calling, or the holding of any meetings or public entertainment."
SECTION 3. BE IT FURTHER ORDAINED, ETC., That Section 1 (as such Section was last amended by Ordinance No. 16,865, C. C. S.) of Ordinance No. 15,510, C. C. S., be and the same is hereby amended as follows:

AMENDMENT NO. 1

Delete all of lines one (1) through fifteen (15), (both inclusive) and insert in lieu thereof the following:
"SECTION 1. BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF NEW ORLEANS, That from and after the passage of this ordinance, every person, firm, corporation, or partnership who shall desire to use the public streets, sidewalks or public places, or private places, or business establishments for the conduct of any of the business or calling hereinafter setforth, or to hold meetings or rallies, or public entertainments in private or public halls or places, shall first apply to and obtain from the Mayor of the City of New Orleans a permit according to the following schedule, which permit shall in each instance state the occasion for which it is issued and the date upon which it shall expire. Said permits shall be good for or be

ules."

AMENDMENT NO. 2

Delete all of paragraph "U" and insert in lieu thereof the following:
"U. To operate automatic coin vending machines (other than penny machines), selling candy, cigarettes, soft drink, or other articles of merchandise, per machine, per year $3.00
For penny vending machines, per machine, per year ... $2.50
Adopted by the Commission Council of the City of New Orleans, January 5, 1951.
G. S. WEAVER,
Clerk of Commission Council.
Approved January 5, 1951.
deLESSEPS S. MORRISON,
Mayor.
A true copy:
W. J. ELKSON,
Secretary to the Mayor.

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APPENDIX "D"

ORDINANCE "

CITY OF NEW ORLEANS

CITY HALL, NOV 18 1954, 1954

CALENDAR NO. 228

NO. 217 MAYOR COUNCIL SERIES

BY: ~~MR. FITZMORRIS~~ MR. DUFOURC MR. FITZMORRIS MR. CASSIBRY MR. MOORE

AN ORDINANCE to amend and re-ordain Ordinance No. 15,510 C.C.S., entitled: "AN ORDINANCE regulating and fixing the cost of permits issued for the purpose of operating in and on public streets and other public places, legal coin-operated machines, to vendors of merchandise, solicitors, canvassers, etc., for the holding of fish fries, parades, circuses and the holding of meetings, rallies and public entertainments, etc., and repealing Ordinances Nos. 14,294, 14,302, 14,434 and 15,347 C.C.S , and any and all ordinances and parts of ordinances in conflict herewith," by adding an additional paragraph to Section 1 thereof, and repealing all ordinances, or parts of ordinances, in conflict herewith.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 1 of Ordinance No. 15,510 C.C.S., be and the same is hereby amended by adding an additional paragraph at the end of Section 1 thereof, to read as follows:

"In addition to the charges shown in the above schedule, each applicant shall be required to pay the sum of Twenty-Five Cents (25¢), for account of the Police Pension Fund, which additional sum shall be transmitted by the Collector of Revenue, day by day as collected by him, to the Chief of Bureau of the Treasury. At the end of each month the Chief of Bureau of the Treasury shall remit all such sums so collected for account of the Police Pension Fund to the Board of Trustees, Police Pension Fund, City of New Orleans.

SECTION 2. That all ordinances, or parts of ordinances, contrary to or in conflict herewith, be and the same are hereby repealed.

Adopted by the Council of the City of New Orleans DEC 16 1954

PRESIDENT OF COUNCIL

Delivered to the Mayor

on DEC 17 1954

APPROVED:

Returned by the Mayor

on DEC 21 1954 at 11:00 AM

~~DISAPPROVED:~~ 21 Dec 54

CLERK OF COUNCIL

MAYOR

MEMORANDUM TO CALENDAR ORDINANCE 228

Notice required by Sec. 3-113(5) of the City Charter should be published on this ordinance, giving summary thereon as follows:

Said ordinance will require all applicants to pay the sum of twenty-five cents for account of the Police Pension Fund, in addition to the cost of permits required by Ordinance 15,510, C.C.S. for the purpose of operating in and on public streets and other public places, legal, coin-operated machines, of vendors of merchandise, solicitors, canvassers, etc., and for fish fries, parades, meetings, rallies and entertainments, etc.

APPENDIX "E"

CITY OF NEW ORLEANS

CITY HALL, JANUARY 28, 1965

CALENDAR NO. 3261

NO. 3027, MAYOR COUNCIL SERIES

BY: COUNCILMAN KELLY

AN ORDINANCE amending Section 46-1 of Ordinance No. 828, M.C.S., known as the Code of the City of New Orleans, by adding paragraph (40) thereto and by adding Section 46-7 to Chapter 46 of said Code, relative to permit fees of $250.00 to be paid by transient merchants doing business in hotel rooms or other temporary quarters and regulating the conduct of said business.

SECTION I. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 46-1 of Ordinance 828, M.C.S., be and is amended by adding Paragraph (40) thereto, reading as follows:

(40) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business, hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof, per location, per year, $250.00

SECTION 2. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 46 of Ordinance 828, M.C.S., be and is amended by adding the following Section thereto, to-wit:

SECTION 46-7. Permit for sales at retail in temporary quarters.

The words "transient vendors, canvassers, solicitors and merchants" as used herein, shall be defined as meaning all persons engaging in the sale at retail of goods, wares and merchandise within the corporate limits of the City of New Orleans and who, for the purpose of carrying on such business, hires, leases, or occupies, either in whole or in part, a room, building, or other structure for the exhibition and sale at retail of such goods, wares, and merchandise, and with the intention to close out or discontinue such business within a period of one year from the date of the commencement thereof.

The provisions of this Section shall not apply to any person selling fruits, vegetables or farm products when raised by such vendor, or to any person who conducts a sale pursuant to statute or court order.

I. It shall be unlawful for any transient vendor canvasser, solicitor or merchant to sell at retail or offer for sale within the corporate limits at retail of the City of New Orleans any goods, wares or merchandise except in accordance with the provisions of this section.

2. Every transient vendor, canvasser, solicitor or merchant subject to the provisions of this section, before selling, or offering for sale, within the City of New Orleans any goods, wares or merchandise, either from stock or by sample, shall make application to the Director of Finance of the City of New Orleans for a permit to carry on such business in the City of New Orleans. Such application shall be in writing, duly sworn to by the applicant in person, or by the applicant's duly authorized representative, and shall contain the following information.

(a) The name of the person having the management or supervision of such business during the time it shall be carried on in the City of New Orleans; the address of such person while engaged in such business in the City of New Orleans, and the capacity in which such person will act; that is, whether as proprietor or agent, and the name of the person for whose account the business shall be carried on, and if a corporation, under the laws of what state the same is incorporated.

(b) Three business references.

(c) The place where the owner of such business conducts or maintains an established place of business.

(d) The place in the City of New Orleans where it is proposed to carry on such business, and the length of time during which it is expected or proposed that such business shall be conducted.

(e) The place, other than the permanent place of business of the owner, where such transient vendor, canvasser, solicitor or merchant within the six months next preceeding the date of such application conducted or carried on a temporary or transitory business, stating the nature thereof and giving the post office and street addresses of any building or office in which such business was so conducted.

(f) A statement of the nature, character and quantity of the goods, wares or merchandise to be sold or offered for sale in the City of New Orleans and the invoice value of such goods, and a statement as to whether the goods are to be sold from stock in possession or by sample, and whether the same are to be sold at auction or public outcry, or by personal solicitation, or otherwise. Bills or invoices of purchase of goods shall be attached to the application when

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(g) A brief statement of the nature and character of the advertising done or to be done in order to attract customers, and, if required by the Director of Finance, copies of all advertising, whether by handbills, circulars, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto.

(h) The number, either of arrests or convictions of misdemeanors or crimes, and the nature of the offenses for which arrested or convicted, if any.

(i) To the application must be appended a letter from the firm for which the applicant purports to do business, authorizing the applicant to act as its representative.

3. It shall be unlawful for any transient vendor, solicitor, canvasser or merchant to engage in business until he shall have first applied to and obtained a permit to engage in business, in accordance with the provisions of this Section and especially the provisions of paragraph 2 of this Section, and has paid all taxes and fees required by law for the transaction of such business in the City of New Orleans. It shall be the duty of the Director of Finance to issue such permit in writing which shall state the date same is issued, the nature of the business authorized to be carried on and the expiration date of said permit, the place where such business may be carried on under such permit, and the name of the person or persons authorized to carry on the same, which permit shall be signed by the Director of Finance or his authorized representative. The permit so issued shall be posted conspicuously in the place of business named therein. In the event the person applying for such permit shall desire to do business in more than one place, then separate permits shall be applied for and issued for each place of business, and shall be posted conspicuously in each place of business, and the fee herein provided for shall be paid for each permit.

4. The violation of any of the provisions of this Section, or the doing of business otherwise than provided in the application and permit issued thereon, shall constitute a forfeiture of the permit, and the Director of Finance shall suspend the operation of such permit not to exceed ten days, and upon the request of the holder of such permit, grant a hearing and rule upon such forfeiture. Should the Director of Finance find that there has been a violation of the condition of the permit or of this Section, working a forfeiture of the permit, such permit shall be immediately forfeited, surrendered, and cancelled. A forfeiture of the permit shall not entitle the transient vendor, canvasser, solicitor or merchant to any refund of taxes or fees paid.

5. Immediately upon issuing any permit provided for in Section 46-7, the Director of Finance or any of his deputies shall at any time thereafter and at all reasonable hours make an inspection of the place of business as provided in said permit and shall determine whether or not such business is carried on or conducted by the person or persons and in the manner provided in the permit, and the application upon which the permit was issued, and whether the permit is posted as provided by Section 46-7, and whether or not the other provisions of said Section

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6. In order to defray the cost and expense of the enforcing of this Section, every such transient vendor, canvasser, solicitor or merchant subject to the provisions of this Section, shall, in addition to all taxes, privileges and fees required by law to be paid for the transacting of such business in the City, pay a permit fee of $250.00, which shall be paid to the Director of Finance, or to his designated deputy. All permit fees collected under this Section 46-7 shall be transmitted to the City Treasurer in accordance with Section 46-5 of this ~~Section~~ Chapter.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAR 4 - 1965

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor

on MAR 4 - 1965

APPROVED: MAR 5 - 1965

~~DISAPPROVED~~

Returned by the Mayor

on MAR 5 - 1965

at 11:00 A.M.

V. H. SCHIRO
M A Y O R

ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "F"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, MAY 28, 1970

CALENDAR NO. 4712

NO. 4346 MAYOR COUNCIL SERIES

BY: COUNCILMAN DiROSA

AN ORDINANCE to amend Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by adding new paragraph (41) to Section 46-1 relative to permits required for various callings or occasions.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding new paragraph (41) to Section 46-1.

"(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

SECTION 2. The provisions of this Ordinance shall become effective immediately and the Director of Finance shall collect one-half (½) year permit fee for the remainder of 1970 and

a full year permit fee each year thereafter."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JUL 16 1970

JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on JUL 16 1970

Approved: JUL 21 1970
(Disapproved)

MOON LANDRIEU
MAYOR

Returned by the Mayor
on JUL 21 1970 at 9:00 A.M.

ROGER L. SARPAT
CLERK OF COUNCIL

CRS 70-137

mc

APPENDIX "G"

CITY OF NEW ORLEANS

CITY HALL, JULY 16, 1970

CALENDAR NO. 4744

NO. 4359 MAYOR COUNCIL SERIES

BY: COUNCILMAN MOREAU

AN ORDINANCE to amend Chapter 46-1 of Ordinance Number 823 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, by deleting Paragraph (1) in its entirety.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46-1 of Ordinance Number 823 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Paragraph (1) in its entirety and substituting in lieu thereof the following:

To sell novelties, etc. on the city streets:

(1) ~~There is no occupational license tax required~~

A. For a fixed location to sell novelties, etc.:

(a) During the Mardi Gras season beginning on January 6 through Mardi Gras Day .... $ 50.00

(b) ~~For one half year~~

(c) ~~For one year~~

b
(d) There shall be a $50.00 deposit on these permits to guarantee payment of sales tax at the end of the Mardi Gras season.

c
(e) A specific location can be assigned, but not guaranteed by the City.

d
(f) These permits shall be non-transferable.

B. For moving vendors ~~to sell novelties, etc. on~~ the city streets:

(a) During the Mardi Gras season beginning on January 6 through Mardi Gras Day .... $ 25.00

(b) xxxx

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, JULY 16, 1970

CALENDAR NO. 4745

O. 4360 MAYOR COUNCIL SERIES

Y: COUNCILMAN MOREAU

AN ORDINANCE to amend Chapter 46-1 of rdinance Number 828 M.C.S., known as the ode of the City of New Orleans, relative to schedule of fees for certain permits, by eleting Paragraph (14) in its entirety.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46-1 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, relative to a schedule of fees for certain permits, be and i: hereby amended by deleting Paragraph (14) in its entirety.

DOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS AUG 6 1970

JAMES A. MOREAU

PRESIDENT OF THE COUNCIL

Delivered to the Mayor on AUG 6 1970

Approved: AUG 7 1970

MOON LANDRIEU

MAYOR

Returned by the Mayor

on AUG 7 1970 at 9:30 A.M.

ROGER L. SARRAT

CLERK OF COUNCIL

CRS 70-76

APPENDIX "I"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, NOVEMBER 12, 1970

CALENDAR NO. 4821

. 4439 MAYOR COUNCIL SERIES

: COUNCILMAN JOHN D. LAMBERT, JR. (BY REQUEST)

AN ORDINANCE to amend Ordinance Number 828, M.C.S. known as the Code of the City of New Orleans, Chapter 46, elative to a schedule of fees for certain permits, by edrafting Section 46-5 and Sub-sections (1) through (40) f Section 46-1, deleting Section 46-6 and adding ections 46-14 and 46-15.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46 of Ordinance Number 828, M. C. S., known as the Code of the City of New Orleans, be and is herely amended by deleting Section 46-5 in its entirety and substituting in lieu thereof the following:

SECTION 46-5. FEES TO GO TO GENERAL FUND

The Collector of Revenue shall transmit, day by day, as collected by him, to the Bureau of Treasury all moneys and fees received for the issuance of the permits required by this chapter. The Bureau of the Treasury upon the receipt of such moneys and fees shall immediately depoist them in the General Fund.

SECTION 2. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Sub-sections (1) through (40) of Section 46-1 in their entirety and substituting in lieu thereof the following:

SECTION 46-1

(1) To sell the following items on city streets during Mardi Gras season beginning January 6 thru Mardi Gras Day:

A. For a fixed location

(a)(1)To sell novelties.....$50.00

(2)To sell candies,nuts and confections..$50.00

(3)To sell sandwiches and soft drinks....$50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras season.

(c) A specific location can be assigned but not guaranteed by theCity.

B. For moving locations

(1) To sell novelties.....$25.00

(2) To sell candies,nuts and confections.$25.00

(3) To sell sandwiches and soft drinks...$25.00

(2) To sell novelties on the city streets other than during the Mardi Gras season $25.00

~~(a) Per sales outlet, for one-half year.....$12.50~~

~~(b) Per sales outlet, for one year.....$25.00~~

~~(c) For purposes of this section, one-half year may include January 2 or January 3 whenever the Sugar Bowl Football game is played.~~

(3) To sell candies, nuts and confections on foot or from pushcarts or other vehicles on city streets or public places other than during the Mardi Gras season.

~~(a) Per sales outlet, per half-year.....$12.50~~

~~(b) Per sales outlet, per year.....$25.00~~

~~(c) For purposes of this section one-half year may include January 2 or January 3 whenever the Sugar Bowl Football game is played.~~

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.

(a) Per sales outlet, per half-year.....$12.50

(b) Per sales outlet, per year.....$25.00

(c) For purposes of this section one-half year may include January 1 or January 2, whenever the Sugar Bowl Football game is played.

(5) To sell hot tamales and/or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.

per sales outlet, per year.....$25.00

(6) To peddle cooked food, cakes, pies, etc. other than during the Mardi Gras season.

(a) Per sales outlet, per half-year.....$25.00

(b) Per sales outlet, per year.....$50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places

$25.00

per sales outlet, per year.....$10.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles

per vehicle, per year.....$50.00

(9) To sell home-manufactured articles or home-grown products on foot

$25.00

per year.....$5.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square

$40.00

per year.....$100.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc. on city streets or public places

$15.00

per year.....$ 5.00

(12) To sell tickets to supper to be held in private homes

per event.....$15.00 ~~$5.00~~

(13) Demonstrations of food products or devices in public places or markets, etc.

per engagement.....$25.00

(14) To distribute samples, canvass on city streets or from house to house

per year

(a) for crew manager.....$25.00 ~~$15.00~~

(b) for each crew member.....$15.00 ~~$5.00~~

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property

(a) per year.....$100.00 ~~$60.00~~

(b) per month.....$15.00 ~~$7.50~~

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed

per year.....$25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph

per year.....$250.00

(18) To operate a hand organ in the city streets

per year.....$15.00 ~~$5.00~~

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Sections 51:31 to 51:41 of the Revised Statutes of Louisiana

per sale.....$75.00

(20) Weighing devices, etc., on sidewalks or in public places

per nickel machine, per year ..... $25.00 ~~$5.00~~

per penny machine, per year ..... $15.00 ~~$2.50~~

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted

per month.....$25.00

(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis per year in addition to license $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.

$100.00

per year ..... ~~$50.00~~

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:

(a) Admission not more than 75¢, per event..$15.00 ~~$5.00~~

(b) Admission more than 75¢, per event .....$25.00 ~~$10.00~~

(25) For amateur and professional prizefights or boxing and wrestling contests:

(a) Admission not more than 75¢, per event..$15.00 ~~$5.00~~

(b) Admission more than 75¢, per event .....$25.00 ~~$10.00~~

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected

(a) Admission not more than 75¢ or by invitation

per event.....$15.00 ~~$10.00~~

(b) Admission more than 75¢, per event..... $25.00 ~~$15.00~~

$25.00

(27) For Carnival Balls $50.00

(28) For philarmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner

(a) Admission not more than 75¢ or by invitation per event $15.00 $5.00 $25.00

(b) Admission more than 75¢ $10.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged per year $50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted per year $25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner per year $100.00

(32) For dancing when admission is charged: $15.00

(a) Admission not more than 75¢, per event.. $5.00 $25.00

(b) Admission not more than $1.99, per event $10.00 $50.00

(c) Admission $2.00 or more, per event.... $25.00

(33) For a private dance in a public hall $15.00

per event ..... $ 1.00

(34) To give a rummage sale per event ..... $ 5.00

(35) For any trancient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such

goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof per location, per year $250.00

SECTION 3, That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-6 in its entirety.

SECTION 4. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding Section 46-14 as follows:

SECTION 46-14 PEDDLING NOVELTIES, SOUVENIRS AND FOODS - PROHIBITED NEAR SCHOOLS

It shall be unlawful to sell novelties, souvenirs, candies, nuts, confections, ice cream, ice cream bars, hot tamales, hot dogs, sandwiches, soft drinks, cakes, pies, fruits and vegetables on the city streets within two (2) blocks of any elementary Or secondary school when said school is in session.

SECTION 5. That Chapter 46 of Ordinance Number 828, M.C.S., known as the code of the City of New Orleans, be and is hereby amended by adding Section 46-15 as follows:

SECTION 46-15 PENALTIES AND INTEREST

All mayoralty permits must be obtained prior to the occasion for which it is issued. Should applicant fail to secure the permit prior to the occasion, the following penalties and interest shall apply:

A. Mayoralty permits acquired on a regular yearly basis shall become delinquent February 1 of that year. If the regular yearly permit is not obtained by February 1 of that year, there shall be interest added to the fee at the rate of eight per centum (8%) per annum from the due date until paid.

In addition to the interest that may be so added, a penalty shall be imposed at the rate of twenty per centum (20%)of the fee if the failure to obtain said permit is for not more than thirty days and with an additional twenty per centum (20%) for each additional thirty days or fraction thereof during which the failure continues, not to exceed sixty per centum (60%) of the amount of the fee.

B. Mayoralty permits acquired on other than a regular yearly basis shall become delinquent at the start of the occasion. If the permit has not been obtained prior to the occasion, there shall be interest added to the fee at the rate of eight per centum (8%) per annum from due date until paid. In addition to the interest that may be so added, a penalty shall be imposed at the rate of fifty per centum (50%) of the fee.

C. The Director of Finance may, at his discretion, for good cause, waive, in whole or in part, any of the peralties herein provided.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS DEC 18 1970

JOSEPH V. DI ROSA

PRESIDENT OF THE COUNCIL

Delivered to the Mayor on DEC 21 1970

Approved: DEC 22 1970

MOON LANDRIEU

MAYOR

Returned by the Mayor

on DEC 22 1970 at 11:30 A.M.

ROGER L. SARRAT

CLERK OF COUNCIL

APPENDIX "J"

APPENDIX "J"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, MAY 6 1971

CALENDAR NO. 1967

NO. 4555 MAYOR COUNCIL SERIES

BY: COUNCILMAN LAMBERT (By request)

AN ORDINANCE to amend/Ordinance Number 828, M.C.S., and reordain Section 46-1 of known as the Code of the City of New Orleans ~~by amending and reordaining Section 46-1~~ relative to a schedule of fees for certain permits and regulations governing these permits. and to amend Chap 46 of said Code by adding thereto a new section, Section 46-16 relativ to penalty for failure to comply w the regulations.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS that Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1 after the words "the date upon which it will expire" the following:

and shall be in addition to any other tax or license to which permittee may be liable.

SECTION 2. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1, subsection (1) A. (b) the following: This deposit will be forfeited 30 days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans.

SECTION 3. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding to Section 46-1, subsection (1) A. the following:

SECTION 46-1

(1) A.(d) Vendors at fixed locations may set up on public streets, property or right-of-ways their vehicles or stands during parade time only. Parade time shall be defined as that time commencing two (2) hours before the start of a parade and ending two (2) hours after the passing of the parade. This provision will not apply when there is more than one parade on any Calendar Day in which case vendor must move two (2) hours after the end of the last parade for that Calendar Day.

(e) Where the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the city shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width.

(h) All vendors selling from fixed locations shall have the mayoralty permit as provided for in this section publicly displayed by the permittee at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras permits for vendors from fixed locations whether on private or public property shall be issued for the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. to the river side of Dauphine St.

SECTION 4, That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans is hereby further amended by adding to Section 46-1, subsection (1) B., the symbol (a) in front of the words "For Moving Vendors" and by adding subsections as follows:

SECTION 46-1

(1) B. (b) All moving vendors must keep moving except when making a sale.

(c) The Department of Finance shall provide at their cost moving vendors with a Mardi Gras Mayoralty Badge which must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this chapter. A permittee shall be required to issue a Mardi Gras Mayoralty badge to each of his agents or employees and failure to do so shall constitute a violation of this Chapter by the permittee.

(d) No Mardi Gras moving vendors shall be permitted in the area bounded by the downtown side of Iberville St. to the river side of Royal St. to the uptown side of Dumaine St. and to the river side of Dauphine St.

SECTION 5. That Chapter 46, Section 46-1 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby further amended by deleting (6) (a) in its entirety and by deleting the symbol (b) in subsection (6) in front of the words "Per sales outlet".

SECTION 6. That Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding Section 46-16 as follows:

PENALTY.

SECTION 46-16. Persons who fail to obtain said permit or to comply with any of the regulations contained in this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the punishment prescribed in Section 1-6 of the Code of the City of New Orleans. A permittee so convicted shall forfeit said permit and not be entitled to a refund of the fees paid therefor.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS MAY 13 1971

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on MAY 13 1971

Approved: MAY 17 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor on MAY 17 1971 at 1:30 P.M.

ROGER L. SARRAT
CLERK OF COUNCIL

APPENDIX "K"

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL, SEPTEMBER 23, 1971
CALENDAR NO. 5112

No. 4744 MAYOR COUNCIL SERIES
BY COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans by amending and re-ordaining the first paragraph of Section 46-1 and by adding subsection (36) to Section 46-1 relative to mayoralty permits for vendors of newspapers and magazines and vendors of flowers and to add Section 46-1.1 relative to the validity of certain mayoralty permits in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by deleting the first paragraph of Section 46-1 in its entirety and inserting in lieu thereof the following: "Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainment in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however, are not valid in the Vieux Carre except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:"

SECTION 2. THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans be and is hereby amended by adding Section 46-1 (36) to read as follows:

"SECTION 46-1.

(36) To sell flowers on the city sidewalks or streets
Per sales outlet, per year.....$50.00

SECTION 3. THAT Chapter 46 of Ordinance Number 828, M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by adding Section 46-1.1 as follows:

"SECTION 46-1.1. PERMITS VALID IN THE VIEUX CARRE Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carre, which is defined as the area bounded by the River, the Uptown side of Esplanade Avenue, the River side of North Rampart Street and the Lower side of Iberville Street, to wit: Sections (5), (10), (12), (19), (21), (24) through and including (36) and (41).

SECTION 4. THAT the effective date of this ordinance shall be January 1, 1972.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS Dec. 8, 1971.

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on Dec. 8, 1971.

Approved: Dec. 9, 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor

on Dec. 9, 1971 at 9:30 A.M.

ROGER L. SARRAT
CLERK OF COUNCIL

cc: 183
sah

APPENDIX "L"

ORDINANCE
(AS AMENDED)

CITY OF NEW ORLEANS

CITY HALL, SEPTEMBER 23, 1971

CALENDAR NO. 5113

NO. 4746 MAYOR COUNCIL SERIES

BY: COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 14 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans, by adding Section 14-40, relative to solicitations in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 14 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans be and the same is hereby amended by adding Section 14-40 to read as follows:

SECTION 14-40

SOLICITATIONS FOR CHARITY, ETC., PROHIBITED IN VIEUX CARRE.

It shall be unlawful to solicit money, subscriptions, advertising, gifts in kind or contributions or sell tickets, or magazines for any charitable, religious, educational or benevolent purposes as herein set forth on the sidewalks, streets, malls or squares in the section known as the Vieux Carre which is defined as the area bounded by the River, the Uptown side of Esplanade Avenue, the River side of North Rampart Street and the Lower side of Iberville Street..

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS DEC. 15, 1971

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on DEC. 15, 1971

Approved: DEC. 17, 1971

MOON LANDRIEU
M A Y O R

Returned by the Mayor

On DEC. 17, 1971 at 11:00 A.M.

ROGER L. SARRAT
CLERK OF COUNCIL

CC 71-191

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS Dec. 8, 1971.

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on Dec. 8, 1971.

Approved: Dec. 9, 1971

MOON LANDRIEU
MAYOR

Returned by the Mayor

on Dec. 9, 1971 at 9:30 A.M.

ROGER L. SARRAT
CLERK OF COUNCIL

cc: 183
sah

BEST COPY AVAILABLE

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL April 6, 1972

CALENDAR 5244

NO. 4822 MAYOR COUNCIL SERIES

BY: COUNCILMAN DI ROSA

AN ORDINANCE to amend Chapter 46 of Ordinance No. 828 M.C.S. known as the Code of the City of New Orleans relative to vendors.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Chapter 46 of Ordinance No. 828 M.C.S. known as the Code of the City of New Orleans, be and is hereby amended by amending Section 46-1.1 to add the following thereto:

"Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS APR 13 1972

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on APR 13 1972

Approved: APR 17 1972

MOON LANDRIEU
MAYOR

Returned by the Mayor

APR 17 1972 at 3-30 PM

ROGER L. SARRAT
CLERK OF COUNCIL

CRS 72-152

at

APPENDIX "N"

CITY OF NEW ORLEANS

CITY HALL August 31, 1972

CALENDAR NO. 5373

NO. [illegible] MAYOR COUNCIL SERIES

BY: COUNCILMAN DIROSA

AN ORDINANCE to amend Section 46-1.1. of Chapter 46 of Ordinance Number 828 M. C. S., known as the Code of the City of New Orleans, relative to permits valid in the Vieux Carre.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that Section 46-1.1. of Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, be and the same is hereby amended and reordained to read as follows:

"Section 46-1.1. Permits valid in the Vieux Carre. Permits designated by the following numbers of Section 46-1 are valid within the area designated as the Vieux Carre, which is defined as the area bounded by the river, the uptown side of Esplanade Avenue, the river side of North Rampart Street and the lower side of Rhonville Street, to wit: Sections (10), (12), (13), (21), (24) through and including (35) and (41)."

"Vendors who have continuously operated the same business within the Vieux Carre under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within the Vieux Carre."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS SEP 21 1972

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on SEP 21 1972

Approved: SEP 28 1972
[illegible]

MOON LANDRIEU
MAYOR

Returned by the Mayor on
SEP 28 1972 at 11-45 PM

CAROL L. BREAUX
ACTING CLERK OF COUNCIL

BEST COPY AVAILABLE

APPENDIX "O"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL February 8, 1973

CALENDAR NO. 5537

NO. 5085 MAYOR COUNCIL SERIES

BY: COUNCILMAN DIROSA (BY REQUEST)

AN ORDINANCE to amend Chapter 46 of Ordinance Number 828 M.C.S., known as the Code of the City of New Orleans, by amending Section 46-1, relative to Mayoralty Permits for Vendors during the Mardi Gras Season.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS THAT Chapter 46 of the Ordinance #828M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by deleting Section 46-1 (1) in its entirety and inserting in lieu thereof the following:

SECTION 46-1

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.

3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any Calendar Day the vendor must move two (2) hours after the end of the last parade for that Calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on City Streets along the designated "Parade Route" during"Mardi Gras Season":

1. For a Fixed Location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages). $50.00
(2) Candy, nuts and confections $50.00
(3) Novelties . . . . . $50.00.

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "Parade Time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828 M.C.S., Code of the City of New Orleans relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands,card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this Chapter.

(i) No Mardi Gras Mayoralty permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants of Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Departmen of Fire, Fire Prevention Bureau before permit can be issue

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) . . . . . 25.00 ~~$50.00~~

(2) Candy, nuts and confections . . . . . ~~$50.00~~

(3) Novelties . . . . . 25.00 ~~$50.00~~

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828 M.C.S, Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays, shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance 828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "Parade Time" along designated "Parade Routes".

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15, 1973

JAMES A. MOREAU
PRESIDENT OF THE COUNCIL

Delivered to the Mayor On Feb. 15, 1973

Approved: February 19, 1973

MOON LANDRIEU
MAYOR

Returned by the Mayor

Feb. 19, 1973 at 3:20 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "P"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, February 8, 1973

CALENDAR NO. 5538

NO. 5086 MAYOR COUNCIL SERIES

BY: COUNCILMEN DI ROSA AND DUPUY

An Ordinance to amend Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans, by amending and reordaining Section 46-1 relative to permits.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS That Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans, be and is hereby amended by amending and reordaining the first paragraph of Section 46-1 to read as follows: "Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however, are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this Chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:"

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15,1973

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on February 15, 1973

Approved:
Rxxxxxxxxxxx February 19, 1973

MOON LANDRIEU
MAYOR

Returned by the Mayor

on February 19,1973 at 3:20 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "Q"

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL, FEBRUARY 8, 1973

CALENDAR No. 5539

NO. 5087 MAYOR COUNCIL SERIES

BY: COUNCILMEN DI ROSA AND DUPUY

An Ordinance to amend Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans by amending and reordaining Section 46-1.1 relative to Permits valid within the Central Business District.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Chapter 46 of Ordinance #828 M.C.S., known as the Code of the City of New Orleans be and is hereby amended by amending and reordaining Section 46-1.1 to read as follows:

"SECTION 46-1.1 PERMITS VALID IN THE CENTRAL BUSINESS DISTRICT. Permits designated by the following Subsections of Section 46-1, Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this Chapter for eight or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area."

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS February 15,1973

JAMES A. MOREAU
PRESIDENT OF COUNCIL

Delivered to the Mayor on February 15, 1973

Approved:
XXXXXXXXXXX February 19, 1973

MOON LANDRIEU
MAYOR

Returned by the Mayor

on February 19,1973 at 3:20 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

APPENDIX "R"

CHAPTER 46

PERMITS[1]

Section 46-1. Permits required for various callings or occasions; schedule of fees therefor.[2]

Every person who shall desire to use the public streets, sidewalks or public places or private places or business establishments for the conduct of any of the businesses or callings hereinafter set forth or to hold meetings or rallies or public entertainments in private or public halls or places shall first apply to and obtain from the Department of Finance a permit. Such permit shall in each instance state the occasion for which it is issued and the date upon which it will expire and shall be in addition to any other tax or license to which permittee may be liable. Such permits, however are not valid within the Central Business District area bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue, on the North and Howard Avenue on the South, except as provided in Section 46-1.1 of this chapter. Such permits shall be paid for by the applicant at the time of issuance according to the following schedule:

(1) A. Definitions:

1. "Mardi Gras Season" is defined as those days and nights commencing eleven (11) days before Mardi Gras and continuing until midnight on Mardi Gras day.

2. "Parade Route" is defined as that area extending one (1) city block in either direction of the streets used by the various parades while the parade is in progress.

3. "Parade Time" is defined as that time commencing two (2) hours before the starting time of a parade and ending two (2) hours after the passing of a parade, but no vendor shall sell or display his wares within the Central Business

1. For charter provisions with respect to permits, including a definition of "permit" as there used, see Char., §§ 4-701 and 4-702. For provisions requiring a permit for engaging in various occupations or undertakings dealt with in the other chapters hereof, see those chapters.

2. For licenses on other coin operated machines, see Chapter 16, Coin Operated Machines.

District which is defined as the area bounded by the River, Esplanade Avenue, Claiborne Avenue and Howard Avenue, prior to 6:00 p.m. on weekdays, except Mardi Gras Day. On weekends and on Mardi Gras Day when there is more than one parade on any calendar day the vendor must move two (2) hours after the end of the last parade for that calendar day.

4. "Vehicle" is defined as a conveyance which is licensed by the Motor Vehicle Division of the Louisiana State Department of Safety.

B. To sell the following items on city streets along the designated "parade route" during Mardi Gras Season:

1. For a fixed location:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages)	$50.00
(2) Candy, nuts and confections	50.00
(3) Novelties	50.00

(b) There shall be a $50.00 deposit on each permit to guarantee payment of sales tax at the end of the Mardi Gras Season. This deposit will be forfeited thirty (30) days after Mardi Gras if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales tax and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) A specific location can be assigned but not guaranteed by the City.

(d) Vendors at fixed locations on public streets, may set up their vehicles during "parade time" only.

(e) When the use of a fixed location would interfere with a parade along a particular route or interfere with public safety, the

City shall have the option to deny the use of such location for such period of time as may be necessary.

(f) Vendors selling from fixed locations shall comply with all provisions of Chapter 38 of Ordinance #828, M.C.S., Code of the City of New Orleans, relative to traffic regulations, especially, but not exclusively with regard to distances from fire hydrants and intersections.

(g) The trailer, van and any appendant thereto from which a vendor sells shall not exceed thirty (30) feet in length or nine (9) feet in width. Vendors must sell and display from a "vehicle"; no stands, card tables or the like shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(h) All vendors selling from fixed locations shall have the Mayoralty Permit as provided for in this section publicly displayed at his place of business and failure to do so shall constitute a violation of this chapter.

(i) No Mardi Gras Mayoralty Permits shall be issued for vendors from fixed locations on public streets, sidewalks, alleys, parks or squares in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(j) All applicants for Mardi Gras Mayoralty Permits to sell food and/or drinks on public or private property must show proof of compliance with all regulations and requirements of the City Board of Health and the Department of Fire, Fire Prevention Bureau before permit can be issued.

2. For Moving Locations:

(a) To Sell

(1) Sandwiches, cooked foods and drinks (other than alcoholic beverages) $25.00

(2) Candy, nuts and confections ... 50.00
(3) Novelties 50.00

(b) There shall be a $25.00 deposit on each permit to guarantee payment of sales tax as provided in Section 56-41, of Ordinance #828, M.C.S., Code of the City of New Orleans, at the end of the Mardi Gras Season. This deposit will be forfeited 30 days after Mardi Gras, if taxpayer has not filed his sales tax return. This provision shall not restrict the authority of the Director of Finance to assess and collect sales and use tax in accordance with Chapter 56 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(c) All moving vendors must keep moving except when making a sale. No stands, card tables or the like, except hand-carried displays shall be allowed on public streets, sidewalks, alleys, parks, squares, neutral grounds or rights-of-way for the sale or display of goods.

(d) For each permit issued one (1) Mardi Gras Mayoralty Badge with a corresponding number shall be purchased by the permittee from the Department of Finance, which badge must be publicly displayed on their person at all times and failure to do so shall constitute a violation of this Chapter.

(e) Mardi Gras Mayoralty Permits for moving locations shall be invalid in the Vieux Carre as defined in Section 65-6 of Ordinance #828, M.C.S., Code of the City of New Orleans.

(f) Mardi Gras Mayoralty Permits for moving locations shall only be valid during "parade time" along designated "parade routes".

(2) To sell novelties on the city streets other than during the Mardi Gras season.
Per sales outlet, for one year ..... $ 25.00

(3) To sell candies, nuts and confections on foot or from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(4) To sell ice cream, ice cream bars and related confections from push carts or other vehicles on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(5) To sell hot tamales and or hot dogs on foot or from push carts on city streets or public places other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 25.00

(6) To peddle cooked food, cakes, pies, etc., other than during the Mardi Gras season.
Per sales outlet, per year ..... $ 50.00

(7) To sell fruits and vegetables on foot or from push carts on city streets or public places.
Per sales outlet, per year ..... $ 25.00

(8) To sell fruits and vegetables from animal-drawn or motor propelled vehicles.
Per vehicle, per year ..... $ 50.00

(9) To sell home-manufactured articles or home-grown products on foot.
Per year ..... $ 25.00

(10) To paint, exhibit or sell paintings and/or portraits or to exhibit or sell works of art on public property in immediate vicinity of Jackson Square.
Per year ..... $ 40.00

(11) To sell razor blades, toilet articles, pencils, shoe laces, etc., on city streets or public places.
Per year ..... $ 15.00

(12) To sell tickets to supper to be held in private homes.
Per event ..... $ 15.00

(13) Demonstrations of food products or devices in public places or markets, etc.
Per engagement ..... $ 25.00

(14) To distribute samples, canvass on city streets or from house to house.
(a) For crew manager, per year ..... $ 25.00
(b) For each crew member, per year 15.00

(15) To advertise with music, on truck or on foot or in costume or for any other advertising stunt on public property.
(a) Per year $100.00
(b) Per month 15.00

(16) To take and sell photographs on the city streets or other public places where the parties photographed willingly pose for the picture and the picture is developed on the spot where taken and there delivered to the parties photographed.
Per year ..... $ 25.00

(17) To take and sell photographs on city streets or in any other public places in any other manner than that described in the preceding paragraph.
Per year $250.00

(18) To operate a hand organ in the city streets.
Per year ..... $ 15.00

(19) To conduct a sale of goods, wares or merchandise in issuance, bankruptcy, mortgage, insolvent assignees, receivers, trustees removal or closing out sale or sale of goods, wares and merchandise damaged by fire or otherwise in accordance with Section 51:31 to 51:41 of the Revised Statutes of Louisiana.
Per sale ..... $ 25.00

(20) Weighing devices, etc. on sidewalks or in public places.
Per nickel machine, per year ..... $ 25.00
Per penny machine, per year 15.00

(21) Exhibitions, expositions, etc., educational or otherwise, when admission is charged or offerings solicited or accepted.
Per month ..... $ 25.00

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(22) For a circus, a carnival or any other activity wherein mechanical devices for amusement other than coin-operated are used on a temporary basis.
Per year in addition to license $100.00

(23) To operate games of sport or skill when admission is charged or a fee collected in any manner, including putt-putt games, shooting galleries, archery, etc.
Per year $100.00

(24) To conduct sport events when admission is charged or a fee collected in any manner and when an annual license is not paid to the city:
(a) Admission not more than 75¢ per event .. $ 15.00
(b) Admission more than 75¢ per event 25.00

(25) For amateur and professional prizefights or boxing and wrestling contests:
(a) Admission not more than 75¢ per event .. $ 15.00
(b) Admission more than 75¢ per event 25.00

(26) For entertainment (other than fairs given by a church for the benefit of the church or by a school for the benefit of the school) dance reviews, plays, festivals, bazaars, etc., with or without music, when admission is charged or when no admission is charged, but subscription fees or contributions are collected.
(a) Admission not more than 75¢ or by invitation
Per event ..... $ 15.00
(b) Admission more than 75¢ per event 25.00

(27) For Carnival Balls ..... $ 25.00

(28) For philharmonic or symphonic recitals, operas or other entertainments of like nature when admission is charged or a fee or subscription is collected in any manner.
(a) Admission not more than 75¢ or by invitation
Per event ..... $ 15.00
(b) Admission more than 75¢ 25.00

(29) For orchestras in restaurants or business establishments for purposes of entertainment or dancing when no admission is charged.
Per year ..... $ 50.00

(30) For music other than an orchestra for entertainment purposes or dancing when no admission is charged or fee exacted.
Per year ..... $ 25.00

(31) For music for entertainment purposes or dancing where admission is charged or fee exacted in any manner.
Per year ..... $ 100.00

(32) For dancing when admission is charged:
(a) Admission not more than 75¢ per event ..... $ 15.00
(b) Admission not more than $1.99 per event ..... $ 25.00
(c) Admission $2.00 or more per event $ 50.00

(33) For a private dance in a public hall.
Per event ..... $ 15.00

(34) To give a rummage sale.
Per event ..... $ 15.00

(35) For any transient vendor, canvasser, solicitor or merchant engaged in the sale at retail of goods, wares and merchandise and who, for the purpose of carrying on such business hires, leases, or occupies, either in whole or in part, a room, or some other temporary quarter a structure for the exhibition and sale of such goods, wares and merchandise and with the intention to close out or discontinue such business within a period of one year from the date of commencement thereof.
Per location, per year ..... $ 250.00

(36) To sell flowers on the city sidewalks or streets.
Per sales outlet, per year ..... $ 50.00

(37)—(40) Reserved.

(41) For the purpose of operating a retail business establishment exhibiting and selling to the public books, magazines, periodicals and other publications or paraphernalia which feature nudity, simulate natural or unnatural sex acts or otherwise appeal to sexually prurient interests and which establishments cater exclusively to adults $10,000.00

(C.C.S., Ord. No. 15,510, § 1; C.C.S., Ord. No. 17,633, § 1; C.C.S., Ord. No. 17,989, § 3; M.C.S., Ord. No. 3027, § 1, 3-4-65; M.C.S., Ord. No. 4346, § 1, 7-16-70; M.C.S., Ord. No. 4359, § 1, 8-6-70; M.C.S., Ord. No. 4360, § 1, 8-6-70; M.C.S., Ord. No. 4439, § 2, 12-18-70; M.C.S., Ord. No. 4555, §§ 1—3, 5-13-71; M.C.S., Ord. No. 4744, §§ 1, 2, 12-8-71; M.C.S., Ord. No. 5085, § 1, 2-15-73; M.C.S., Ord. No. 5086, § 1, 2-15-73.)

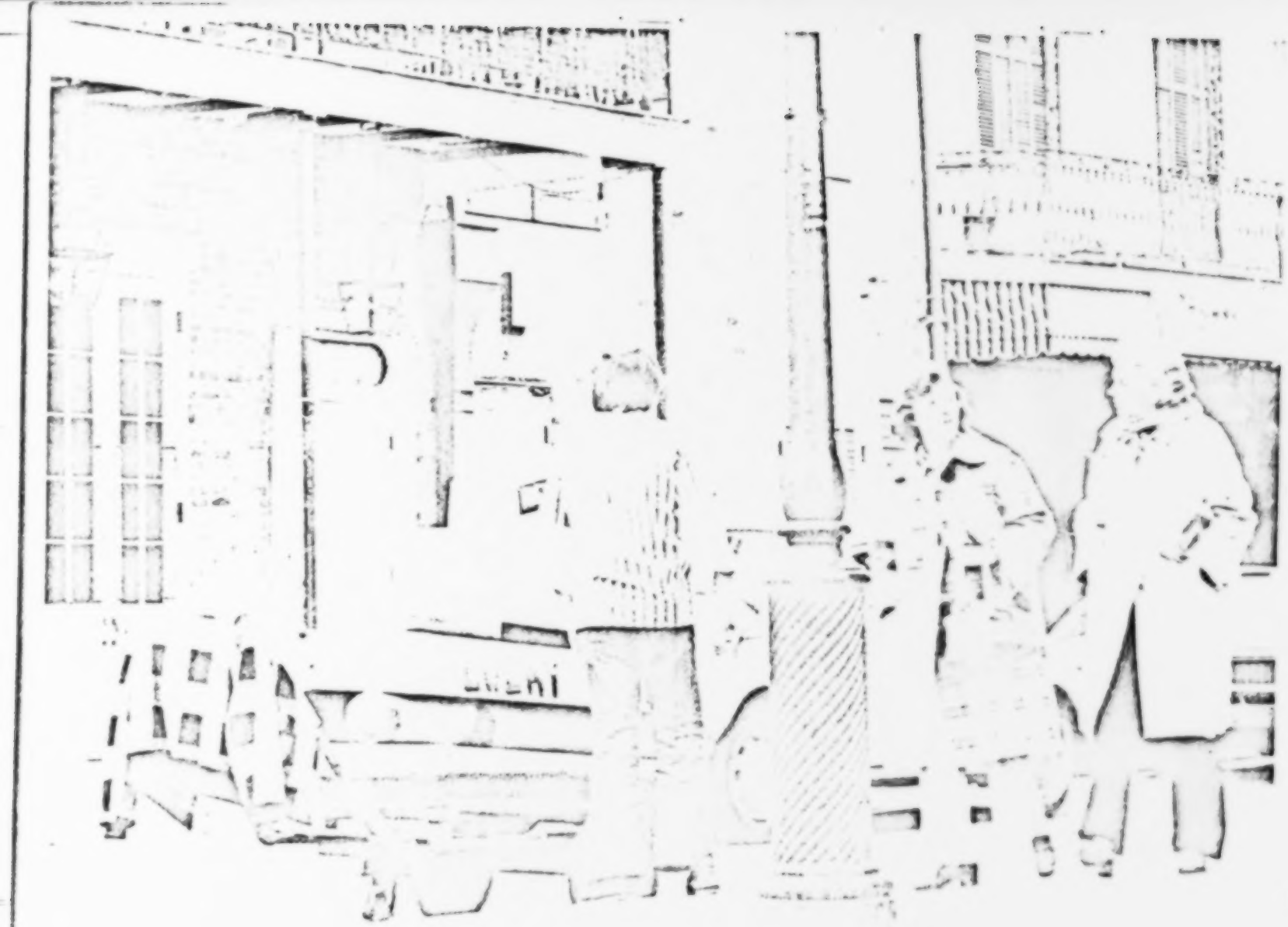
Section 46-1.1. Permits valid in the central business district.

Permits designated by the following subsection of Section 46-1: Subsections (1), (10), (12), (19), (21), (24), through and including (36), are valid within that area of the Central Business District bounded by the River on the East, Claiborne Avenue on the West, Esplanade Avenue on the North and Howard Avenue on the South. Vendors who have continuously operated the same business within that area under the authority of this chapter for eight (8) or more years prior to January 1, 1972 may obtain a valid permit to operate such business within that area. (M.C.S., Ord. No. 4744, § 3, 12-8-71; M.C.S., Ord. No. 4822, § 1, 4-13-72; M.C.S., Ord. No. 4957, § 1, 9-21-72; M.C.S., Ord. No. 5087, § 1, 2-15-73.)

Section 46-2. Additional twenty-five cents charges for Police Pension Fund.

In addition to the charges shown in the schedule in Section 46-1, each applicant shall be required to pay the sum of twenty-five cents for the account of the Police Pension Fund, which additional sum shall be transmitted by the Collector of Revenue, day by day, as collected by him, to the Chief of Bureau of the Treasury. At the end of each month the Chief of Bureau of the Treasury shall remit all such sums so collected for account of the Police Pension Fund to the Board of Trustees, Police Pension Fund, City of New Orleans. (M.C.S., Ord. No. 217, § 1.)

APPENDIX "S"



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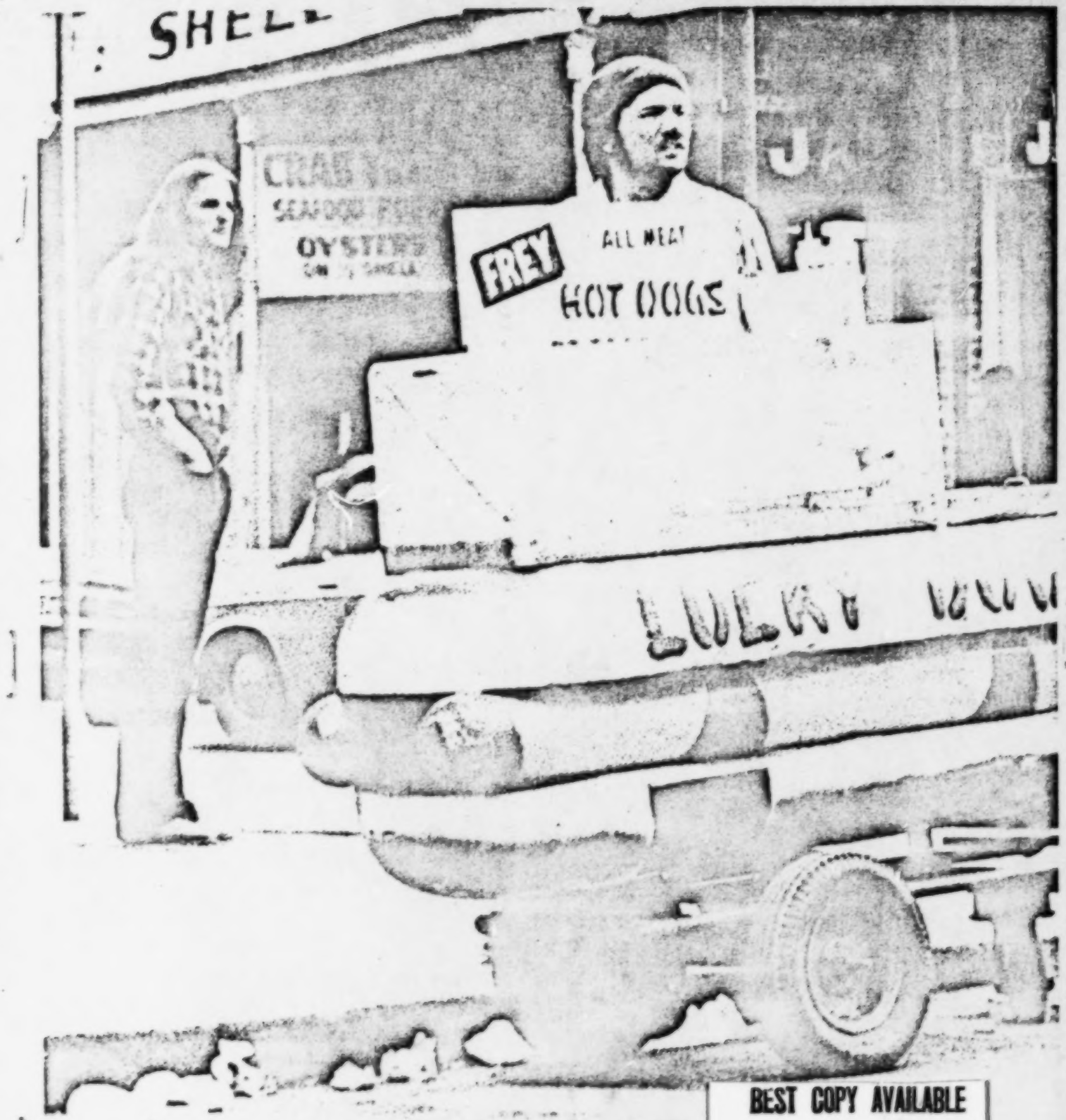

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